



2026:DHC:6342-DB



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

***Reserved on: 03.07.2026***

***Pronounced on: 06.08.2026***

# CNR No. DLHC010082512019

+ CRL.REF. 1/2019

COURT ON ITS OWN MOTION

.....Petitioner

Through: Mr.Siddharth Yadav, Sr. Adv.  
(Amicus Curiae) with  
Mr.Narender Lodiwal and  
Mr.Wasim Ashraf, Advs.

versus

STATE

.....Respondent

Through: Mr.Aditya Wadhwa and  
Ms.Shivani Pegatraju, Advs. for  
accused no.1

Mr.Anupam S. Sharrma, SPP  
with Ms.Harpreet Kalsi,  
Mr.Prakarsh Airan, Mr.Vashisht  
Rao, Ms.Amisha P. Dash,  
Mr.Abhiyant Singh and  
Mr.Mayank Tyagi, Advs. for  
CBI

Mr.N. Hariharan, Sr. Adv. with  
Dr.Sushil Gupta, Ms.Sunita  
Gupta, Ms.Anshika Kumari,  
Ms.Aditi Ranjan and  
Mr.Apoorv Chaudhry, Advs.

Mr.Anuj Chauhan, Ms.Sweety  
Chauhan, Ms.Geetika Verma,  
Mr.Harsh Kumar and Mr.Sunil  
Yadav, Advs.

Mr.Harsh K. Sharma,



Ms.Vaibhavi Sharma,  
Mr.Lakshay Parasher,  
Ms.Kashish Jain, Mr.Ujjwal  
Krishna, Mr.Ranjeet Singh,  
Advs.

Mr.Sushil Gupta and Ms.Sunita  
Gupta, Adv.

Ms.Sima Gulati, Mr.Manish  
Vashist and Ms.Diksha Narula,  
Advs.

Mr.Hitendra Nahata, Adv.

Mr.Sudarshan Rajan and  
Mr.Kashish, Adv.

Mr.Ripudaman Bhardwaj,  
CGSC with Mr.Kushagra  
Kumar and Mr.Amit Kumar  
Rana, Adv. for UOI

Mr.Vedansh Anand, SPC with  
Mr.Kush Garg and Mr.Mohit  
Bhardwaj, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**  
**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

## **J U D G M E N T**

**NAVIN CHAWLA, J.**

### **I. REFERENCE**

1. The present reference under Section 395 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as,



“Cr.P.C.”) has been made by the learned Special Judge (PC Act), CBI-01, Central District, Tis Hazari Courts, Delhi on the following questions of law:

*“1. Whether under the Prevention of Corruption (Amendment) Act, 2018 (which is a Special Statute and overrides the General Law) the cognizance of the offence is taken or cognizance of the offence against the offender is taken [Ref.: Dilawar Singh Vs. Parvinder Singh (Supra) and Abhay Singh Chautala Vs. C.B.I (Supra)]?*

*2. (a) What is the relevant date for application of Prevention of Corruption (Amendment) Act, 2018 in cases pending trial?*

*(b) Whether the amendment to Section 19 of Prevention of Corruption Act, 1988 dated 26.07.2018 is to be read retrospectively being beneficial to the accused? [Ref.: Basheer @N.P. Basheer Vs. State of Kerala (Supra)]*

*3. Whether sanction as contemplated under Section 19 of the Prevention of the Corruption Act (Amendment) Act, 2018 is necessary for prosecuting a Former/ Ex Public Servant where the cognizance of the offence has already been taken by the competent court prior to 26.07.2018 i.e. the date on which the amendment came into effect?*

*4. Any other issue of law which arises relating to vires of the Prevention of Corruption (Amendment) Act, 2018 (16 of 2018) which came into effect on 26.07.2018 particularly in relation to Section 19 of the Prevention of Corruption Act.”*

2. The learned Special Judge has narrated the facts giving rise to the present reference, as also his opinion on the questions referred to this Court. We do not deem it necessary to reproduce the same in our judgment. We further clarify that we are not considering the facts of



the case on which the reference has been made. Once we answer the questions that have been referred to us, it would be for the learned Special Judge to consider the facts of the case and apply the law thereto.

3. To answer the reference, we shall first take a look at the evolution of the law relating to penalising corruption by Public Servants.

## **II. EVOLUTION OF LAW ON SANCTION**

### **INDIAN PENAL CODE**

4. Historically, the law dealing with bribery and corruption by public servants was governed by Chapter IX: Sections 161 to 165A of the Indian Penal Code, 1860 (hereinafter referred to as the “IPC”). Section 197 of the Cr.P.C. prohibited the Courts from taking cognizance of the above offences against a public servant without the previous sanction of the Central or the State Government, as the case may be.

### **PREVENTION OF CORRUPTION ACT, 1947**

5. To deal with the growing complaints of corruption by public servants, and to make the law against it to be more effective, the Prevention of Corruption Act, 1947 (hereinafter referred to as the ‘1947 Act’) was promulgated.

6. Section 6 of the 1947 Act provided for the necessity of previous sanction for a Court to take cognizance of an offence alleged to have been committed by a public servant. We reproduce the same as under:

**“6. Previous Sanction Necessary for Prosecution.-** (1) No court shall take



*cognizance of an offence punishable under S. 161 or S. 164 or S. 165 of the Indian Penal Code, or under sub-section (2) or sub-section (3-A) of S. 5 of this Act, 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 the Central 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 the State 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 whether the previous sanction as required under sub-section (1) should be given by the Central or 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.”*

7. Interpreting the provisions of Section 6 of the 1947 Act, the Supreme Court has consistently held that a prior sanction is required only where the accused had committed the offence when he was a public servant and continues to be a public servant in the same capacity when the Court is called upon to take cognizance of such offence. It has been held that there is no requirement of obtaining a



prior sanction where, at the time cognizance is taken by the Court, the accused has ceased to be a public servant or is a public servant in a different capacity from the one held by him when the offence is alleged to have been committed. We shall refer to a few of these judgments hereinafter.

8. In **S.A. Venkataraman v. State**, 1957 SCC OnLine SC 38, the Supreme Court considered whether there was any necessity for a sanction under Section 6 of the 1947 Act before a Court could take cognizance of an offence under Section 161 of the IPC or Section 5(2) of the 1947 Act, or both, alleged to have been committed by a person who, at the time the Court was asked to take cognizance, was not a public servant but was one at the time of the commission of the offence. The Supreme Court held that, in construing the provisions of a statute, it is essential for the Court, in the first instance, to give effect to the natural meaning of the words used therein if those words are clear enough. It is only in cases of an ambiguity that the Court is entitled to ascertain the intention of the legislature by construing the provisions of the statute as a whole and taking into consideration other matters and the circumstances which led to the enactment of the statute. It was further held that if a general power to take cognizance of an offence is vested in a Court, any prohibition on the exercise of that power by any provision of law, must be confined to the terms of the prohibition, and unless the conditions contained therein are complied with, no such prohibition is to be implied. The Court further held that for attracting Section 6 of the 1947 Act, two conditions must be fulfilled: first, that the offence mentioned therein must have been



committed by a public servant, and second, that the person is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government, or is a public servant who is removable from office by any other competent authority. It was held that if either of these conditions is lacking, the essential requirements of Section 6 are wanting, and the provisions of the Section 6 do not stand in the way of a Court taking cognizance without a previous sanction. The Court further held that at the time a Court is asked to take cognizance of an offence under the 1947 Act, the offence must not only be committed by a public servant, but the accused must also still be a public servant removable from his office by the Central Government/State Government/Competent Authority, as the case may be. We quote from the judgment as under:

*14. When the provisions of Section 6 of the Act are examined it is manifest that two conditions must be fulfilled before its provisions become applicable. One is that the offences mentioned therein must be committed by a public servant and the other is that that person is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government or is a public servant who is removable from his office by any other competent authority. Both these conditions must be present to prevent a court from taking cognizance of an offence mentioned in the section without the previous sanction of the Central Government or the State Government or the authority competent to remove the public servant from his office. If either of these*



conditions is lacking, the essential requirements of the section are wanting and the provisions of the section do not stand in the way of a court taking cognizance without a previous sanction. An offence under Section 161 of the Penal Code can be committed by a public servant or by a person expecting to be a public servant, but Section 6 of the Act refers only to an offence committed by a public servant under that section. If, therefore, at the time a court was asked to take cognizance of an offence under Section 161 of the Penal Code, the accused is a public servant but was not so at the time that the offence was committed, but at which time he was merely expecting to be a public servant, a previous sanction would be unnecessary before a court could take cognizance, as the provisions of the section would be inapplicable. Conversely, if an offence under Section 161 of the Penal Code was committed by a public servant, but, at the time a court was asked to take cognizance of the offence, that person had ceased to be a public servant, one of the two requirements to make Section 6 of the Act applicable would be lacking and a previous sanction would be unnecessary. The words in Section 6(1) of the Act are clear enough and they must be given effect to. There is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the court was asked to take cognizance, although he had been such a person at the time the offence was committed. It was suggested that clause (c) in Section 6(1) refers to persons other than those mentioned in clauses (a) and (b). The words “is employed” are absent in this clause which would, therefore, apply to a



person who had ceased to be a public servant though he was so at the time of the commission of the offence. Clause (c) cannot be construed in this way. The expressions “in the case of a person” and “in the case of any other person” must refer to a public servant having regard to the first paragraph of the sub-section. Clauses (a) and (b), therefore, would cover the case of a public servant who is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government and clause (c) would cover the case of any other public servant whom a competent authority could remove from his office. The more important words in clause (c) are “of the authority competent to remove him from his office”. A public servant who has ceased to be a public servant is not a person removable from any office by a competent authority. Section 2 of the Act states that a public servant, for the purpose of the Act, means a public servant as defined in Section 21 of the Penal Code. Under clause (c), therefore, anyone who is a public servant at the time a court was asked to take cognizance, but does not come within the description of a public servant under clauses (a) and (b), is accused of an offence committed by him as a public servant as specified in Section 6 would be entitled to rely on the provisions of that section and object to the taking of cognizance without a previous sanction. To read clause (c) in the way suggested on behalf of the appellants, would be to give a meaning to this clause which is not justified by the words employed therein.

**16.** In *Purvez Ardeshir Poonawalla v. State of Bombay*, dealt with by another judgment, where a similar question had been raised, the appellant had suggested that two defects



appearing in Section 197 of the Criminal Procedure Code were intended to be remedied by the Act: (1) that Section 197 did not apply to a public servant who had ceased to be a public servant at the time of the taking of cognizance of an offence and (2) that an offence under Section 161 of the Penal Code committed by a public servant was not covered by Section 197 of the Code, as such offence could not be said to have been committed by him while acting or purporting to act in the discharge of his official duty, having regard to the decisions of the courts in India and of the Privy Council. We cannot see how this assists us in construing Section 6 of the Act. Whatever the phraseology of Section 197 of the Code may have been in the past, the decisions of the courts in India that Section 197 of the Code does not apply to a person who had ceased to be a public servant at the time a court was asked to take cognizance were based upon the words used in that section at the time the judgments were pronounced. These decisions laid emphasis on the words “when any person who is a Judge within the meaning of Section 19 of the Penal Code ... or when any public servant who is not removable from his office...”. It was held in these decisions that these words meant that the person must be a public servant at the time a court was asked to take cognizance, although he may have been a public servant at the time of the commission of the offence. It is true that unlike Section 197 of the Code, Section 6 of the Act does not contain the words “while acting or purporting to act in the discharge of his official duty”. We have to construe Section 6 of the Act as we find it and the absence of these words from the section renders us no assistance in its construction.”

**(Emphasis supplied)**



9. In **R.S. Nayak v. A.R. Antulay**, (1984) 2 SCC 183, the Supreme Court was considering a case where the accused was alleged to have committed the offence while holding the office of the Chief Minister, from which he had resigned with effect from 20.01.1982, however, had continued to retain his seat as an MLA. A contention was, therefore, raised that as the accused continued to be a public servant, a prior sanction was still required. The Court framed, *inter alia*, the following questions for its consideration:

*“(a) What is the relevant date with reference to which a valid sanction is a prerequisite 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 or misused for corrupt motives?”*

10. In answering question (a), the Supreme Court reiterated that the relevant date with reference to which a valid sanction is a prerequisite



for prosecution of a public servant is when the Court takes cognizance of the offence. The Supreme Court held as under:

*“19. Section 6 bars the court from taking cognizance of the offences therein enumerated alleged to have been committed by a public servant except with the previous sanction of the competent authority empowered to grant the requisite sanction. Section 8 of 1952 Act prescribes procedure and powers of Special Judge empowered to try offences set out in Section 6 of 1947 Act. Construction of Section 8 has been a subject to vigorous debate in the cognate appeal. In this appeal we will proceed on the assumption that a Special Judge can take cognizance of offences he is competent to try on a private complaint. Section 6 creates a bar to the court from taking cognizance of offences therein enumerated except with the previous sanction of the authority set out in clauses (a), (b) and (c) of sub-section (1). The object underlying such provision was to save the public servant from the harassment of frivolous or unsubstantiated allegations. The policy underlying Section 6 and similar sections, is that there should not be unnecessary harassment of public servant. (See C.R. Bansi v. State of Maharashtra.) Existence thus of a valid sanction is a prerequisite to the taking of cognizance of the enumerated offences alleged to have been committed by a public servant. The bar is to the taking of cognizance of offence by the court. Therefore, when the court is called upon to take cognizance of such offences, it must enquire whether there is a valid sanction to prosecute the public servant for the offence alleged to have been committed by him as public servant. Undoubtedly, the accused must be a public servant when he is alleged to have committed the offence of which he is accused because Sections 161, 164, 165 IPC and Section 5(2) of the 1947 Act clearly spell out that the offences therein defined can be*



committed by a public servant. If it is contemplated to prosecute public servant who has committed such offences, when the court is called upon to take cognizance of the offence, a sanction ought to be available otherwise the court would have no jurisdiction to take cognizance of the offence. A trial without a valid sanction where one is necessary under Section 6 has been held to be a trial without jurisdiction by the court. (See Respondents R. Chari v. State of U.P. and S.N. Bose v. State of Bihar.) In Mohd. Iqbal Ahmad v. State of A.P. it was held that a trial without a sanction renders the proceedings ab initio void. But the terminus a quo for a valid sanction is the time when the court is called upon to take cognizance of the offence. If therefore, when the offence is alleged to have been committed, the accused was a public servant but by the time the court is called upon to take cognizance of the offence committed by him as public servant, he has ceased to be a public servant, no sanction would be necessary for taking cognizance of the offence against him. This approach is in accord with the policy underlying Section 6 in that a public servant is not to be exposed to harassment of a frivolous or speculative prosecution. If he has ceased to be a public servant in the meantime, this vital consideration ceases to exist. As a necessary corollary, if the accused has ceased to be a public servant at the time when the court is called upon to take cognizance of the offence alleged to have been committed by him as public servant, Section 6 is not attracted. This aspect is no more res integra. In S.A. Venkataraman v. State this Court held as under:

*“In our opinion, in giving effect to the ordinary meaning of the words used in Section 6 of the Act, the conclusion is inevitable that at the time a court is asked to take cognizance not only the offence must have been committed by a public servant but the person*



*accused is still a public servant removable from his office by a competent authority before the provisions of Section 6 can apply. In the present appeals, admittedly, the appellants had ceased to be public servants at the time the court took cognizance of the offences alleged to have been committed by them as public servants. Accordingly, the provisions of Section 6 of the Act did not apply and the prosecution against them was not vitiated by the lack of a previous sanction by a competent authority.”*

*And this view has been consistently followed in C.R. Bansal case and K.S. Dharmadatan v. Central Government. It therefore appears well-settled that the relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by a public servant as required by Section 6 is the date on which the court is called upon to take cognizance of the offence of which he is accused.”*

*20. The accused tendered resignation of his office as Chief Minister and ceased to hold the office of Chief Minister with effect from January 20, 1982. The complaint from which the present appeal arises and which was registered as Criminal Case No. 24/82 appears to have been filed on August 9, 1982 and the cognizance was taken by the learned Magistrate on the same day. It unquestionably transpires that long before the date on which the cognizance was taken by the learned Special Judge, the accused had ceased to hold the office of the Chief Minister and as such had ceased to be a public servant. In other words, he was not a public servant in his capacity as Chief Minister on August 9, 1982 when the court took cognizance of the offence against him. A fortiori no sanction as contemplated by Section 6 was necessary*



before cognizance of the offence could be taken against the accused for offences alleged to have been committed in his former capacity as public servant.”

**(Emphasis supplied)**

11. In answer to question nos. (b) and (c), the Supreme Court held as under:

*“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.*

*27. In the complaint filed against the accused it has been repeatedly alleged that the accused as Chief Minister of Maharashtra State accepted gratification other than legal remuneration from various sources and thus committed various offences set out in the complaint. Nowhere, not even by a whisper, it is alleged that the accused has misused or abused for corrupt motives his office as MLA. 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.....”*

12. The above judgments were rendered while interpreting Section 6 of the 1947 Act.



**PREVENTION OF CORRUPTION ACT, 1988**

13. The 1947 Act was repealed by the 1988 Act, with Section 19 of the same providing for the necessity of previous sanction before a Court could take cognizance of an offence punishable under the specified provisions of the said Act alleged to have been committed by a public servant. We reproduce Section 19(1) of the 1988 Act, as it stood prior to its amendment in 2018, 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.”***

14. In ***Parkash Singh Badal & Anr. v. State of Punjab & Ors.***, (2007) 1 SCC 1, the Supreme Court again considered a case where the appellant therein was the Chief Minister when the offence was alleged to have been committed, while at the time of taking of cognizance, he was a Member of Parliament. The Supreme Court held that Section 19(1) of the 1988 Act is time and offence related. The Court further held that, though pursuant to the 41<sup>st</sup> Report of the Law Commission



of India, an amendment was made in 1969 to Section 197 of the Cr.P.C., Section 19(1) of the 1988 Act, enacted on 09.09.1988, was virtually the same as Section 6 of the 1947 Act. The Court, therefore, again rejected the submission that if the offending act was committed by a public servant in his former capacity and he had not abused his subsequent office, such a public servant would still be entitled to the protection of Section 19(1) of the 1988 Act.

15. In **Abhay Singh Chautala v. Central Bureau of Investigation**, (2011) 7 SCC 141, the appellant therein had held the post of an MLA and Member of Parliament during the check period, and was again elected as an MLA when cognizance had been taken by the Court. The Court reiterated the principle laid down in **R.S. Nayak** (supra) and **Parkash Singh Badal** (supra) and rejected the submissions made to the contrary on the requirement of prior sanction, holding that the same was not required. It was held as under:

*“42. The learned Senior Counsel Shri Mukul Rohatgi as well as Shri U.U. Lalit arguing for the appellants, in support of their argument that Antulay case requires reconsideration, urged that that interpretation deprives the entire class of public servants covered by the clear words of Sections 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 wrongdoing would be defeated. It was also urged that such an interpretation would amount to rewriting 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.*

**43.** *Most of these questions are already answered, firstly, in Antulay case and secondly, in Parkash Singh Badal v. State of Punjab. Therefore, we need not dilate on them. We specifically reject these arguments on the basis of Antulay case itself which has been relied upon in Parkash Singh Badal v. State of Punjab. 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 case and the other cases following Antulay case including Parkash Singh Badal v. State of Punjab. We, therefore, reject all these arguments.*

**44.** *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 clauses (a), (b) and (c) thereof. We, therefore, reject the theory of *littera regis* while interpreting Section 19(1). On the same lines, we reject the argument based on the word “is” in clauses (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 v. Richard Spooner, Bidie, In re, Bidie v. General Accident Fire and Life Assurance Corpn. Ltd. and Bourne (Inspector of Taxes) v. Norwich Crematorium Ltd., 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 case (see the emphasis supplied to para 24 of Antulay judgment)."*

**(Emphasis supplied)**

16. The question of interpretation of Section 19(1) of the 1988 Act prior to its amendment, again arose before the Supreme Court in ***L. Narayana Swamy v. State of Karnataka & Ors.***, (2016) 9 SCC 598. The Court framed, *inter alia*, the following issue:

*"10.2 (ii) Whether a public servant who is not on the same post and is transferred (whether by way of promotion or otherwise to another post) loses the protection under Section 19(1) of the PC Act, though he continues to be a public servant, albeit on a different post?"*

17. The Court, in answering the same, placed reliance on the above referred judgments and held as under:

*"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 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."*

### **PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2018**

18. Section 19(1) of the 1988 Act was amended by the Prevention of Corruption (Amendment) Act, 2018 (hereinafter referred to as, the 'Amendment Act'), which came into effect from 26.07.2018. It made the following substitutions and insertions in Section 19 of the 1988 Act:

*"14. In section 19 of the principal Act, in sub-section (1),—*

*(i) for the words and figures "sections 7, 10, 11, 13 and 15", the words and figures "sections 7, 11, 13 and 15" shall be substituted;*

*(ii) in clause (a), for the words "who is employed", the words "who is employed, or as the case may be, was at the time of commission of the alleged offence employed" shall be substituted;*

*(iii) in clause (b), for the words "who is employed", the words "who is employed, or as the case may be, was at the time of commission of the alleged offence employed" shall be substituted;*

*(iv) after clause (c), the following shall be inserted, namely:—*

*"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 and 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 prosecution of a public servant, prescribe such guidelines as it considers necessary.*

*Explanation.—For the purposes of sub-section (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."."

19. We quote the amended Section 19(1) of the 1988 Act as under:

**"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,—

(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 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 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 prosecution of a public servant, prescribe such guidelines as it considers necessary. Explanation.—For the purposes of sub-section (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.”*

20. As would be evident from a bare reading of the amended Section 19(1) of the 1988 Act, by insertion of the words “*was at the time of commission of the alleged offence employed*”, in connection with the affairs of the Union or State in Sub-Section (a) and (b) of Section 19(1) of the 1988 Act, now the protection is granted even to a former public servant and to an accused who is, on the date of cognizance, holding a different office.

21. An Explanation has also been added to Section 19(1) to clarify that the expression “public servant” includes a person who has ceased to hold the office during which the offence is alleged to have been committed or is holding an office other than the office during which the offence is alleged to have been committed.

22. The effect of the above amendments is to extend the protection even to a former public servant or to a public servant holding such a position in a capacity different from the one held at the time of the alleged commission of offence.

23. While all the learned counsels who have made submissions before us, are *ad idem* and do not dispute that post the Amendment Act and the amended Section 19(1) coming into force, even an erstwhile public servant, or a public servant who holds a post different from the one held by him during the period when the offence is alleged to have been committed, is entitled to protection by the requirement of previous sanction, and the Court is prohibited from taking cognizance of the offences mentioned in the said Section



without prior sanction, they are at variance on whether the said protection also applies retrospectively, that is, to cases where cognizance already stands taken by the Special Judge. In this regard, a question is also posed as to whether, under the 1988 Act, cognizance is taken of the offence or of the offence by a named accused.

### **III. DISCUSSION & FINDINGS ON THE QUESTIONS REFERRED**

24. This brings us to the specific questions referred to us by the learned Special Judge.

#### **QUESTION NO. 1**

25. The learned *Amicus Curiae*, Mr. Siddharth Yadav, Senior Advocate, has submitted that cognizance is taken of an offence and not of the offender. In support, he has placed reliance on the judgments of the Supreme Court in ***Raghubans Dubey v. State of Bihar***, AIR 1967 SC 1167; ***SWIL Ltd. v. State of Delhi & Anr.***, (2001) 6 SCC 670; and ***Parkash Singh Badal*** (supra). He submits that the Prevention of Corruption Act, being a special legislation, the Supreme Court in ***Dilawar Singh v. Parvinder Singh @ Iqbal Singh & Anr.***, (2005) 12 SCC 709, has held that the provisions of Section 19 of the 1988 Act have an overriding effect over Section 190 of the Cr.P.C.

26. He submitted that in ***State of Goa v. Babu Thomas***, (2005) 8 SCC 130, the Supreme Court rejected the argument that, if sanction for prosecution has been granted *qua* one accused, then any other



public servant, for whose prosecution no sanction has been granted, can also be summoned.

27. He further submitted that when the criminal act is performed by a person using his public office as a mere cloak for unlawful gains, such acts are not protected. In support, he has placed reliance on the judgment of the Supreme Court in **Station House Officer, CBI/ACB/Bangalore v. B.A. Srinivasan & Anr.**, (2020) 2 SCC 153. He submits that such protection is further watered down when the accused, besides the offences under the Prevention of Corruption Act, is also charged with offences under the IPC.

28. The other learned counsels adopted the submissions of the learned *Amicus* insofar as he submitted that the Prevention of Corruption Act being a special legislation, the general law that cognizance is taken of an offence and not the offender, would not apply and that on the date of taking cognizance against an offender, the prohibition of Section 19 would be applicable.

29. As far as the proposition that the 1947 Act and the 1988 Act being special legislation, the general law that cognizance is taken of the offence and not the offender, is not applicable, is no longer *res integra* and has, in fact, been settled way back in **Dilawar Singh** (supra), where the Supreme Court, while considering Section 19(1) of the 1988 Act, held as under:

*“4. ... This section creates a complete bar on the power of the court to 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 of the*



competent authority enumerated in clauses (a) to (c) of this sub-section. If the sub-section is read as a whole, it will clearly show that the sanction for prosecution has to be granted with respect to a specific accused and only after sanction has been granted that the court gets the competence to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by such public servant. It is not possible to read the section in the manner suggested by the learned counsel for the respondent that if sanction for prosecution has been granted qua one accused, any other public servant for whose prosecution no sanction has been granted, can also be summoned to face prosecution.

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8. The contention raised by learned counsel for the respondent that a court takes cognizance of an offence and not of an offender holds good when a Magistrate takes cognizance of an offence under Section 190 CrPC. The observations made by this Court in *Raghubans Dubey v. State of Bihar* were also made in that context. The Prevention of Corruption Act is a special statute and as the preamble shows, this Act has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. Here, the principle expressed in the maxim generalia specialibus non derogant would apply which means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. (See *Godde Venkateswara Rao v. Govt. of A.P.*, *State of Bihar v. Dr. Yogendra Singh* and *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*.) Therefore, the provisions of Section 19 of the Act will have an overriding effect over the general provisions contained in Section



190 or 319 CrPC. A Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319 CrPC if no sanction has been granted by the appropriate authority for prosecution of such a person as the existence of a sanction is sine qua non for taking cognizance of the offence qua that person.”

(Emphasis supplied)

30. As far as the above position in law is concerned, there is no change brought about by the Amendment Act in Section 19(1) of the 1988 Act.

31. In view of the above, question no.1 referred by the learned Special Judge is answered thus:

**“Q1. Whether under the Prevention of Corruption (Amendment) Act, 2018 (which is a Special Statute and overrides the general law), the cognizance of the offence is taken or cognizance of the offence against the offender is taken? [Ref.: *Dilawar Singh Vs. Parvinder Singh (Supra)* and *Abhay Singh Chautala Vs. C.B.I (Supra)*]**

**Ans. *Dilawar Singh*** (supra) clearly holds that the general law that cognizance of an offence is taken and not of the offender, is not applicable to Section 19(1) of the 1988 Act, whether pre or post its amendment. Accordingly, no cognizance of an offence under Sections 7, 11, 13 and 15 alleged to have been committed by a public servant can be taken except with a previous sanction granted for the prosecution of such a public servant.



### **QUESTION NOS. 2 & 3**

32. At the outset, we would note that Question no. 2(a), as framed by the learned Special Judge, is rather expansive and not specific to Section 19(1) of the 1988 Act as amended by the Amendment Act. We therefore, shall confine our answer only in the context of the amendment made to Section 19(1) of the Act and shall refrain from giving a general answer on the operation, whether prospective or retrospective, of the other provisions amended by the Amendment Act.

33. With the above caveat, we now proceed further to answer question nos. 2(b) and 3.

34. We may, at the outset, note that what is relevant for Section 19(1) of the 1988 Act is the date on which the Court takes cognizance of the alleged offence and not the date on which the alleged offence is stated to have been committed by a public servant. Of course, the date of the offence is relevant only because the offence must also have been committed by the accused in his capacity as a public servant. This flows from the judgments in *S.A. Venkataraman* (supra), *R.S. Nayak* (supra), *Parkash Singh Badal* (supra), and others, which we have taken note of in the preceding part of our judgment.

35. Mr. N. Hariharan, the learned Senior Counsel has, however, submitted that the Amendment Act made an amendment to Section 19(1) of the 1988 Act to not only address an anomaly that had been created by a misreading of the then Section 19 of the 1988 Act, but also by adding a clarification in the form of an Explanation to Section 19(1) of the Act specifically stating that the term “public servant” in



Section 19 of the Act shall be deemed to include such a person who has ceased to hold the office during which the offence is alleged to have been committed, or 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. He submitted that the Explanation and the change in Section 19(1) of the 1988 Act are intended to negate the effect of the above-referred judgments in **S.A. Venkataraman** (supra), **R.S. Nayak** (supra), **Parkash Singh Badal** (supra), etc., which had held to the contrary while interpreting the then existing Section 19 of the Act. He submits that, therefore, Section 19 of the Act, as amended, has to be given a retrospective effect and be made applicable to cases where the Court has already taken cognizance of the offence without prior sanction of the competent authority.

36. Placing reliance on the judgments of the Supreme Court in **Shyam Sunder & Ors. v. Ram Kumar & Anr.**, (2001) 8 SCC 24; **National Agricultural Cooperative Marketing Federation of India Ltd. & Anr. v. Union of India & Ors.**, (2003) 5 SCC 23; **Commissioner of Income Tax, Bombay & Ors. v. Podar Cement Pvt. Ltd. & Ors.**, (1997) 5 SCC 482; **Allied Motors (P) Ltd. v. Commissioner of Income Tax, Delhi**, (1997) 3 SCC 472; **Zile Singh v. State of Haryana & Ors.**, (2004) 8 SCC 1; and **State Bank of India v. V. Ramakrishnan & Anr.**, (2018) SCC OnLine SC 963, he submits that as the Amendment Act is declaratory in nature and is intended to set aside what the Parliament deemed to have been a judicial error, it would have a retrospective effect.



37. Mr. Anuj Chauhan, the learned counsel, submits that the object of bringing about the amendment was to extend the protection to retired public servants. It was, therefore, intended to address a particular omission/mischief and, as a matter of general principle, should be given a retrospective effect.

38. He submits that, even otherwise, the legislature in the Amendment Act intentionally uses the word ‘substitution’ while making amendment to Section 19(1) of the 1988 Act. Placing reliance on the judgment of the Supreme Court in **Government of India & Ors. v. Indian Tobacco Association**, (2005) 7 SCC 396, he submits that a ‘substitution’ would have the effect of amending the operation of the law during the period in which it was in force and what is substituted would stand substituted from the inception of such provision, thereby giving it a retrospective effect.

39. Placing reliance on the judgment of the Supreme Court in **Rattan Lal @ Ram Rattan v. State of Punjab**, 1964 SCC OnLine SC 40, he submits that as the amendment is intended to grant protection from vexatious prosecution. It being beneficial in nature, must be given a retrospective effect.

40. Mr. Anupam S. Sharma, the learned SPP appearing for the CBI, on the other hand, submits that the Amendment Act in Section 1(2) thereof specifically states that the Act shall come into effect from such date as may be appointed by notification in the Official Gazette, which was 26.07.2018. He submits that therefore, it shall not have a retrospective effect. In support, he places reliance on the judgment of



the Supreme Court in ***Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar & Ors.***, (1999) 8 SCC 16.

41. He submits that this has also been the view of the other High Courts. He refers to the judgment of the Andhra Pradesh High Court in ***V.D. Rajagopal v. State of Telangana***, 2018 SCC OnLine Hyd 403, wherein the Court held that, as the amended Section 19(1) of the 1988 Act casts a new duty on the prosecution to obtain sanction to prosecute a retired government servant and attaches a disability to the prosecution in prosecuting such persons, the same has to be treated as prospective. He further submits that a similar view has been taken by the Telangana High Court in ***Katti Nagaseshanna v. State of Andhra Pradesh*** (judgment dated 16.11.2018 in CrI.P. 9044/2018).

42. He submits that while an amendment made to a procedural law may have a retrospective effect, in terms of Section 6 of the General Clauses Act, 1897 (hereinafter referred to as, the “General Clauses Act”), a statute which creates new disabilities or obligations or imposes new duties in respect of transactions which were complete at the time the amending Act came into force, must be given a prospective effect. In support, he places reliance on the judgments of the Supreme Court in ***Nani Gopal Mitra v. State of Bihar***, 1968 SCC OnLine SC 44; ***Hitendra Vishnu Thakur & Ors. v. State of Maharashtra & Ors.***, (1994) 4 SCC 602; and ***Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Pvt. Ltd.***, (2015) 1 SCC 1.

43. The learned *Amicus Curiae*, placing reliance on the judgment of the Supreme Court in ***State of Telangana v. Managipet Alias***



***Mangipet Sarveshwar Reddy***, (2019) 19 SCC 87, submitted that it is the statute as existing on the date of the offence, that is to be applied and, therefore, the Amendment Act can have only prospective effect. He also submits that to hold otherwise would cause an anomaly, inasmuch as the prosecution may have advanced to different stages and would have to restart if such provision is given a retrospective effect.

44. We have considered the submissions made by the learned counsels for the parties.

45. The Amendment Act, in Section 1(2) thereof, clearly provides that the same shall come into force on such date as the Central Government may by notification in the Official Gazette appoint. Section 1(2) of the Amendment Act is reproduced hereinunder:

*“1. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.”*

46. The Central Government issued a notification dated 26.07.2018, appointing 26.07.2018 as the date on which the provisions of the said Act shall come into force.

47. It is the general law contained in Section 5 of the General Clauses Act that where any Central Act is not expressed to come into force on a particular day, then it shall come into operation on the day on which it receives the assent of the President. Equally, under Section 6 of the General Clauses Act, the repeal of any enactment shall, unless a different intention appears, not affect, *inter alia*, any right, privilege, obligation or liability acquired, accrued, incurred, or affect any



investigation, legal proceedings or remedy in respect of such right, privilege, obligation, or liability, etc. While interpreting the said provisions, the Supreme Court in ***Hitendra Vishnu Thakur*** (supra) culled out the principles with regard to the ambit and scope of an amending Act and its retrospective operation, as under:

*“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 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 a new rights and liabilities, shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."*

48. In ***Vatika Township Pvt. Ltd.*** (supra), the Supreme Court held that one established rule of interpretation of statutes is that, unless a contrary intention appears, a legislation is presumed not to be intended to have retrospective operation. Legislations which impose obligations or new duties or attach new disabilities, unless the legislative intent is clearly to give the enactment a retrospective effect or unless the legislation is for the purpose of supplying an obvious omission in a former legislation or for explaining a former legislation, have to be treated as prospective. If a legislation confers a benefit on some persons, but without inflicting a corresponding detriment on some other persons or on the public generally, then the presumption would be that such a legislation has a retrospective effect. Procedural provisions are, therefore, generally read to have a retrospective effect. A particular amendment can be treated to be clarificatory or declaratory in nature, in which case it is usually held to be retrospective. We quote from the judgment as under:

*"27. A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal*



communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of “interpretation of statutes”. Vis-à-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips v. Eyre*, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of “fairness”, which must be the basis of every legal rule as was observed in *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship*



Co. Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

**30.** We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In *Govt. of India v. Indian Tobacco Assn.*, the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in *Vijay v. State of Maharashtra*. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not) confronted with any such situation here.

**31.** In such cases, retrospectivity is attached to benefit the persons in contradistinction to the



*provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors.*

*32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as “declaratory statutes”. The circumstances under which provisions can be termed as “declaratory statutes” are explained by Justice G.P. Singh in the following manner:*

*“Declaratory statutes*

*The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court: ‘For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word*



*“declared” as well as the word “enacted”.’ But the use of the words ‘it is declared’ is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is ‘to explain’ an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language ‘shall be deemed always to have meant’ is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law.”*

*The above summing up is factually based on the judgments of this Court as well as English decisions.”*

49. In **Nani Gopal Mitra** (supra), the Supreme Court reiterated that though as a general rule, an amendment relating to procedure is



retrospective, at the same time, where the amending Act creates new disabilities or obligations or imposes new duties in respect of transactions which were complete at the time the amending Act came into force, the said principle would not apply. We quote from the said judgment as under:

*“5. It was in the first place contended on behalf of the appellant that Section 5(3) of the Act was repealed by Parliament while the appeal was pending in the High Court and the presumption enacted in Section 5(3) of the Act was not available to the prosecuting authorities after the repeal of the sub-section on December 18, 1964. The argument was stressed that it was not open to the High Court to invoke the presumption contained in Section 5(3) of the Act in considering the case against the appellant. It was also said that the presumption contained in Section 5(3) of the Act was a Rule of procedural law and not a Rule of substantive law and alterations in the form of procedure are always retrospective in character unless there is some good reason or other why they should not be. It was, therefore, submitted that the judgment of the High Court was defective in law as it applied to the present case the presumption contained in Section 5(3) of the Act even after its repeal. We are unable to accept the contention put forward on behalf of the appellant as correct. It is true that as a general Rule alterations in the form of procedure are retrospective in character unless there is some good reason or other why they should not be. In James Gardner v. Edward A. Lucas Lord Blackburn stated:*

*“Now the general Rule, not merely of England and Scotland, but, I believe, of every civilized nation, is expressed in the maxim, ‘Nova constitutio futuris formam imponere debet non prae teritis’ — prima facie, any new law that is made affects*



future transactions, not past ones. Nevertheless, it is quite clear that the subject-matter of an Act might be such that, though there were not any express words to show it, it might be retrospective. For instance, I think it is perfectly settled that if the legislature intended to frame a new procedure, that instead of proceeding in this form or that, you should proceed in another and a different way; clearly there bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be. Then, again, I think that where alterations are made in matters of evidence, certainly upon the reason of the thing, and I think upon the authorities also, those are retrospective, whether civil or criminal.”

*In King v. Chandra Dharma* Lord Alverstone, C.J. observed as follows:

*“The Rule is clearly established that, apart from any special circumstances appearing on the face of the statute in question, statutes which make alterations in procedure are retrospective. It has been held that a statute shortening the time within which proceedings can be taken is retrospective (The Ydun, 1899 p. 236), and it seems to me that it is impossible to give any good reason why a statute extending the time within which proceedings may be taken should not also be held to be retrospective. If the case could have been brought within the principle that unless the language is clear a statute ought not to be construed so as to create new disabilities or obligations, or impose new duties in respect of transactions which were complete at the time when the Act came into force, Mr Compton-Smith would have been entitled to*



succeed; but when no new disability or obligation has been created by the statute, but it only alters the time within which proceedings may be taken, it may be held to apply to offences completed before the statute was passed. That is the case here.”

It is, therefore, clear that as a general Rule the amended law relating to procedure operates retrospectively. But there is another equally important principle viz. that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force — (See *In re a Debtor and In re Vernazza*). The same principle is embodied in Section 6 of the General Clauses Act which is to the following effect:

“6. Effect of repeal — Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

\* \* \*

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

\* \* \*

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

\* \* \*

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”



*6. The effect of the application of this principle is that pending cases although instituted under the old Act but still pending are governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure. In the present case, the trial of the appellant was taken up by the Special Judge, Santhal Parganas when Section 5(3) of the Act was still operative. The conviction of the appellant was pronounced on March 31, 1962 by the Special Judge, Santhal Parganas long before the amending Act was promulgated. It is not hence possible to accept the argument of the appellant that the conviction pronounced by the Special Judge, Santhal Parganas has become illegal or in any way defective in law because of the amendment to procedural law made on December 18, 1964. In our opinion, the High Court was right in invoking the presumption under Section 5(3) of the Act even though it was repealed on December 18, 1964 by the amending Act. We accordingly reject the argument of the appellant on this aspect of the case.”*

50. As far as amendment to Section 19(1) of the 1988 Act is concerned, it creates a new prohibition on the Court from taking cognizance of certain offences committed by an accused who has ceased to be a public servant or is a public servant in a capacity other than the one which he held when the alleged offence had been committed. The said prohibition and consequential protection to an accused, prior to its amendment in 2018, was not applicable to a person who had ceased to be a public servant or who was not a public servant in the same capacity. This remained the consistent position



under Section 6 of the 1947 Act and the pre-amended Section 19(1) of the 1988 Act. The continuation of this restricted protection in Section 19(1) of the 1988 Act, as it stood before its amendment with effect from 26.07.2018, therefore, cannot be said to be a case of omission, but was a conscious decision of the Legislature, till the amendment, not to extend such benefit to the persons who had ceased to be public servants or who held a different office on the date of the Court taking cognizance of the offence against them.

51. It may be true that the Legislature, while amending the 1988 Act by the Amendment Act, wished to extend the protection even to persons who had ceased to be public servants or who held a different office as public servant on the date the Court is asked to take cognizance of the particular offence against them, but it did not make it retrospective, either expressly or by any necessary implication. In fact, as noted hereinabove, the Amendment Act was specifically brought into force with effect from 26.07.2018 and, therefore, was not intended to affect the cases where cognizance already stood taken against accused for whom prior sanction was not required by the then existing law. It is a settled principle of interpretation of statutes that a statute must be given a literal meaning and the Court must not add or subtract words therefrom. A literal interpretation of the amended Section 19(1) of the 1988 Act does not make it retrospective so as to reopen the cases where cognizance already stands taken by the Court.

52. The general principle of prospective application is, therefore, fully applicable to the amended Section 19(1) of the 1988 Act, meaning thereby that, where cognizance already stands taken by the



Court, the amended provision will not be applicable, but where the Court is called upon to take cognizance after the amendment, the amended Section 19(1) of the 1988 Act would be applicable, and if the person against whom cognizance is to be taken falls within the ambit of the said Section, cognizance cannot be taken by the Court without prior sanction of the competent authority.

53. The invocation of principle of a declaratory statute having a retrospective effect, would have no application to the application of amended Section 19(1) of the 1988 Act. Though, by the Amendment Act, an Explanation has been added to Section 19(1) of the 1988 Act, there is no indication therein that the definition of “public servant” now inserted is to apply retrospectively. It does not state that such definition shall be deemed to apply with a retrospective effect. The Legislature would always have been aware of the then existing law and in case it wished to change the law with a retrospective effect so as to do away with the judgments which had taken a consistent interpretation of Section 19(1) of the 1988 Act as it stood prior to its amendment, it would have specifically said so. Neither from the Statement of Objects and Reasons of the Amendment Act nor otherwise from a reading of the provision, do we find any such intention of the legislature.

54. In ***Shyam Sunder*** (supra), the Supreme Court explained the concept of a declaratory legislation and its retrospective effect, as under:

*“39. Lastly, it was contended on behalf of the appellants that the amending Act whereby new Section 15 of the Act has been substituted is*



declaratory and, therefore, has retroactive operation. Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word “declaration” in an Act explaining what was the law before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective. Conversely where a statute uses the word “declaratory”, the words so used may not be sufficient to hold that the statute is a declaratory Act as words may be used in order to bring into effect new law.

**40.** Craies on Statute Law, 7th Edn. stated the statement of law thus:

*“If a doubt is felt as to what the common law is on some particular subject, and an Act is passed to explain and declare the common law, such an Act is called a declaratory Act.”*

**41.** G.P. Singh on Principles of Statutory Interpretation quoting Craies stated thus:

*“For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the*



*interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word “declared” as well as the word “enacted”.’ But the use of the words ‘it is declared’ is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form.*

*If a new Act is ‘to explain’ an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.”*

**42.** *In Keshavlal Jethalal Shah v. Mohanlal Bhagwandas this Court while interpreting Section 29(2) of the amending Act, held thus: (AIR p. 1339, para 8)*

*“An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. Section 29(2) before it was enacted was precise in its implication as well as in its expression; the meaning of the words used was not in doubt, and there was no omission in its phraseology which was required to be supplied by the amendment.”*

**43.** *In R. Rajagopal Reddy v. Padmini Chandrasekharan it was held thus: (SCC Headnote)*



*“Declaratory enactment declares and clarifies the real intention of the legislature in connection with an earlier existing transaction or enactment, it does not create new rights or obligations. If a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. ... A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force the amending Act also will be part of the existing law. If a new Act is to explain an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act.”*

44. From the aforesaid decisions, the legal principle that emerges is that the function of a declaratory or explanatory Act is to supply an obvious omission or to clear up doubts as to meaning of the previous Act and such an Act comes into effect from the date of passing of the previous Act. Learned counsel for the appellants strongly relied upon a decision of a two-Judge Bench of this Court in Mithilesh Kumari v. Prem Behari Khare in support of his argument. In the said decision, it was held by this Court that the Benami Transactions (Prohibition) Act, 1988 being a declaratory Act, the provisions of Section 4 of the Act have retroactive operation. The reliance on this decision by the appellants' counsel is totally misplaced as this decision was overruled in R. Rajagopal Reddy v. Padmini Chandrasekharan wherein it was held that the Act was not passed to clear any doubt that existed as to the common law or the meaning of effect of any statute and it was, therefore, not a declaratory Act.



45. We have already quoted substituted Section 15 of the amending Act but do not find that the amending Act either expressly or by necessary implication intended to supply an omission or to clear up a doubt as to the meaning of the previous Section 15 of the parent Act. The previous Section 15 of the parent Act was precise, plain and simple. There was no ambiguity in it. The meaning of the words used in Section 15 of the parent Act was never in doubt and there was no omission in its phraseology which was required to be supplied by the amending Act. Moreover, the amending Act either expressly or by implication was not intended to be retroactive and for that reason we hold that amending Act 10 of 1995 is not a declaratory Act and, therefore, it has no retrospective operation.

46. For the aforestated reasons, we approve the view of law taken in *Didar Singh v. Ishar Singh* and further hold that the decision in the case of *Ramjilal v. Ghisa Ram* does not lay down the correct view of law.

47. The result of the aforesaid discussion is that the amending Act being prospective in operation does not affect the rights of the parties to the litigation on the date of adjudication of the pre-emption suit and the appellate court is not required to take into account or give effect to the substituted Section 15 introduced by the amending Act.”

(Emphasis supplied)

55. In *National Agricultural Cooperative Marketing Federation of India Ltd.* (supra), the Supreme Court held that the Legislature is competent to overcome a judicial decision by removing the statutory basis of the decision and to correct the statute so as to more correctly represent its intention; such an amendment would have a retrospective



effect. However, as noted by us hereinabove, we do not find any such intention of the Legislature in the Amendment Act to give the Explanation a retrospective effect so as to reopen the cases where cognizance already stands taken. The Explanation has been added only to remove all doubts for the future and not to undo the past.

56. In ***Keshavlal Jethalal Shah (2) v. Mohanlal Bhagwandas & Anr.***, 1968 SCC OnLine SC 14, the Supreme Court, while rejecting a similar contention with respect to the substituted Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 57 of 1947, held as under:

*“14. Counsel for the respondent also submitted that Section 29(2) as amended was intended to have retrospective operation, because the amending Act was in the nature of explanatory legislation.*

*15. There is nothing in the language of Section 29(2) as amended, which may indicate that it was intended to be retrospective in operation. Section 29(2) as amended in terms confers jurisdiction upon the High Court to call for the record of a case for the purpose of satisfying itself that the decision in appeal was according to law, which the High Court did not possess before the date of the amending Act. The amending clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from Section 115 of the Code of Civil Procedure, and the legislature has by the amending Act attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. Section 29(2) before it was enacted, was precise in its*



implication as well as in its expression : the meaning of the words used was not in doubt, and there was no omission in its phraseology which was required to be supplied by the amendment.”

(Emphasis supplied)

57. In **Zile Singh** (supra), the Supreme Court took note of another well-recognized practice employed in legislative drafting, that is, of ‘substitution’, and held that substitution would have the effect of amending the operation of law during the period in which it was enforced. We quote from the said judgment as under:

*“24. The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. "Substitution" has to be distinguished from "supersession" or a mere repeal of an existing provision.*

*25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see Principles of Statutory Interpretation, ibid., p. 565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. v. State of U.P., State of Rajasthan v. Mangilal Pindwal, Koteswar Vittal Kamath v. K. Rangappa Baliga and Co. and A.L.V.R.S.T. Veerappa Chettiar v. S. Michael. In West U.P. Sugar Mills Assn. case a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centring around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal case this Court upheld the legislative practice of an amendment by substitution being incorporated*



*in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case a three-Judge Bench of this Court emphasised the distinction between "supersession" of a rule and "substitution" of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."*

58. In **Gottumukkala Venkata Krishnamraju v. Union of India & Ors.**, (2019) 17 SCC 590, the Supreme Court held that the use of the words 'substitute' or 'substitution' is not conclusive. The Court, having regard to the purpose and object sought to be achieved by the Legislature, may construe the words 'substitution' as an 'amendment', having a prospective effect. We quote from the said judgment as under:

*"16. In the first instance, we have to bear in mind the language/terminology which the legislature used while inserting new Section 6 with effect from 1-9-2016. This section stands "substituted" with the old section. The word "substituted" has its own significance. In Union of India v. Indian Tobacco Assn., this Court noted dictionary meaning of the word "substitute" as can be seen from para 15 of the said judgment: (SCC p. 400)*

*"15. The word "substitute" ordinarily would mean 'to put (one) in place of another'; or 'to replace'. In Black's Law Dictionary, 5th Edn., at p. 1281, the word "substitute" has been defined to mean 'to put in the place of another person or thing', or 'to exchange'. In Collins English Dictionary, the word "substitute" has been defined to mean 'to serve or cause to serve in place of*



*another person or thing'; 'to replace (an atom or group in a molecule) with (another atom or group)'; or 'a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague'."*

**17.** *This expression has also come up for interpretation by the courts in Zile Singh v. State of Haryana, the import and impact of substituted provision were discussed in the following manner: (SCC p. 12, paras 23-24)*

*"23. The text of Section 2 of the Second Amendment Act provides for the word "up to" being substituted for the word "after". What is the meaning and effect of the expression employed therein-"shall be substituted"?"*

*24. The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. "Substitution" has to be distinguished from "supersession" or a mere repeal of an existing provision."*

**18.** *Ordinarily wherever the word "substitute" or "substitution" is used by the legislature, it has the effect of deleting the old provision and make the new provision operative. The process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. No doubt, in certain situations, the Court having regard to the purport and object sought to be achieved by the legislature may construe the word "substitution" as an "amendment"*



*having a prospective effect. Therefore, we do not think that it is a universal rule that the word "substitution" necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. However, the aforesaid general meaning is to be given effect to, unless it is found that the legislature intended otherwise. Insofar as present case is concerned, as discussed hereinafter, the legislative intent was also to give effect to the amended provision even in respect of those incumbents who were in service as on 1-9-2016.*

*19. The effect, thus, would be to replace Section 6 as amended with the intention as if this is the only provision which exist from the date of introduction and the earlier provision was not there at all. The effect of this would be that all those incumbents who are holding the post of Presiding Officer on 1-9-2016 would be governed by this provision.*

*20. When we examine the matter in the aforesaid perspective, the question as to whether Section 6, as amended, is to be given retrospective effect or not, does not arise for consideration. The petitioners are right in submitting that persons who demitted the office prior to the amendment are not sought to be covered by the amendment. Had the provision been retrospective then it would have benefitted those persons as well. No such case is set up by any of the petitioners or any other person, it is only the incumbents who are serving as on the date of the amendment are sought to be covered."*

59. In the present case as well, though the Amendment Act uses the word 'substitution', it, in effect, inserts a new obligation of taking prior sanction even with respect to the former public servants or public



servants who hold a different office when the cognizance of the offence is taken by the Court. It thus inserts a new obligation on the prosecution and does not give any indication of having a retrospective effect, except to the fact that even though the offence may relate to a period prior to the amendment, the protection would enure to the benefit of such former public servants when the Court is to take cognizance of the offence after the Amendment Act has come into force.

60. In view of the above, we answer question nos. 2 and 3 posed to us as under:

**Q2. (a) What is the relevant date for application of Prevention of Corruption (Amendment) Act, 2018 in cases pending trial?**

**(b) Whether the amendment to Section 19 of Prevention of Corruption Act, 1988 dated 26.07.2018 is to be read retrospectively being beneficial to the accused? [Ref.: Basheer @N.P. Basheer Vs. State of Kerala (Supra)]**

**Q3. Whether sanction as contemplated under Section 19 of the Prevention of the Corruption Act (Amendment) Act, 2018 is necessary for prosecuting a Former/ Ex Public Servant where the cognizance of the offence has already been taken by the competent court prior to 26.07.2018 i.e. the date on which the amendment came into effect?**

**Ans.** The relevant date for the application of the amended Section 19(1) of the 1988 Act is with effect from 26.07.2018. The Amendment Act, as far as amendment to Section 19(1) of the 1988 Act, is retrospective to the extent that the benefit thereunder would enure even where the offence is alleged to have been committed prior to its coming into force, however, it is prospective to the effect that, where cognizance of such offence already stands taken



before 26.07.2018, the same shall not be reopened and there would be no fresh requirement of prior sanction in such cases. The requirement of taking sanction would be applicable only where the Court is yet to take cognizance of the offence mentioned in Section 19(1) of the Act as on 26.07.2018 and thereafter.

#### **QUESTION NO. 4**

61. A general question of reference is also made in the following words, which we do not intend to answer, as it is not specific to answer:

*“4. Any other issue of law which arises relating to vires of the **Prevention of Corruption (Amendment) Act, 2018** (16 of 2018) which came into effect on 26.07.2018 particularly in relation to **Section 19** of the Prevention of Corruption Act.”*

#### **IV. SUMMARY/CONCLUSION**

62. We summarise our answers to the reference as under:

**Q1.** Whether under the Prevention of Corruption (Amendment) Act, 2018 (which is a Special Statute and overrides the General Law) the cognizance of the offence is taken or cognizance of the offence against the offender is taken [Ref.: **Dilawar Singh Vs. Parvinder Singh (Supra)** and **Abhay Singh Chautala Vs. C.B.I (Supra)**]?

**Ans. Dilawar Singh** (supra) clearly holds that the general law that cognizance of an offence is taken and not of the offender, is not applicable to Section 19(1) of the 1988 Act, whether pre or post its amendment. Accordingly, no cognizance of an offence



under Sections 7, 11, 13 and 15 alleged to have been committed by a public servant can be taken except with a previous sanction granted for the prosecution of such a public servant.

**Q2.** (a) What is the relevant date for application of Prevention of Corruption (Amendment) Act, 2018 in cases pending trial?

(b) Whether the amendment to Section 19 of Prevention of Corruption Act, 1988 dated 26.07.2018 is to be read retrospectively being beneficial to the accused? **[Ref.: Basheer @N.P. Basheer Vs. State of Kerala (Supra)]**

**Q3.** Whether sanction as contemplated under Section 19 of the Prevention of the Corruption Act (Amendment) Act, 2018 is necessary for prosecuting a Former/ Ex Public Servant where the cognizance of the offence has already been taken by the competent court prior to 26.07.2018 i.e. the date on which the amendment came into effect?

**Ans.** The relevant date for the application of the amended Section 19(1) of the 1988 Act is with effect from 26.07.2018. The Amendment Act, as far as amendment to Section 19(1) of the 1988 Act, is retrospective to the extent that the benefit thereunder would enure even where the offence is alleged to have been committed prior to its coming into force, however, it is prospective to the effect that, where cognizance of such offence already stands taken before 26.07.2018, the same shall not be reopened and there would be no fresh requirement of prior sanction in such cases. The



requirement of taking sanction would be applicable only where the Court is yet to take cognizance of the offence mentioned in Section 19(1) of the Act as on 26.07.2018 and thereafter.

**Q4.** Any other issue of law which arises relating to vires of the Prevention of Corruption (Amendment) Act, 2018 (16 of 2018) which came into effect on 26.07.2018 particularly in relation to Section 19 of the Prevention of Corruption Act.

**Ans.** Not answered.

63. The reference having been answered, the file of the case be transmitted to the concerned Special Judge for proceeding further with the case. The same shall be listed before the concerned Special Judge on 10<sup>th</sup> September, 2026.

64. We express our gratitude to the learned *Amicus Curiae* for rendering assistance to us in answering the questions referred.

65. The reference is disposed of in the above terms.

**NAVIN CHAWLA, J**

**RAVINDER DUDEJA, J**

**AUGUST 6, 2026/ns/Yg**