

ITEM NO.301

COURT NO.13

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Crl.) No.520/2021

[Arising out of impugned final judgment and order dated 05-01-2021 in CRLP No. 9361/2016 passed by the High Court of Karnataka at Bengaluru]

B.S YEDDIYURAPPA

Petitioner(s)

VERSUS

A ALAM PASHA & ORS.

Respondent(s)

IA No. 13491/2021 - INTERVENTION APPLICATION

IA No. 13494/2021 - PERMISSION TO APPEAR AND ARGUE IN PERSON

WITH

SLP(Crl) No. 758/2021 (II-C)

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 10975/2021, IA No. 10975/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

SLP(Crl) No. 2318/2021 (II-C)

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 37664/2021, FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 37670/2021, IA No. 37670/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 37664/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

SLP(Crl) No. 2753/2021 (II-C)

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA

SLP(Crl.) No.520/2021

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46543/2021, FOR EXEMPTION FROM FILING O.T. ON IA 46546/2021, FOR APPLICATION FOR MODIFICATION OF PARTY DETAILS / CHALLENGED JUDGEMENT DETAILS ON IA 35851/2023, IA No. 35851/2023 - APPLICATION FOR MODIFICATION OF PARTY DETAILS / CHALLENGED JUDGEMENT DETAILS IA No. 46546/2021 - EXEMPTION FROM FILING O.T., IA No. 46543/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

SLP(CrL) No. 3372/2021 (II-C)

FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 56807/2021, FOR EXEMPTION FROM FILING O.T. ON IA 56808/2021 IA No. 56807/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 56808/2021 - EXEMPTION FROM FILING O.T.

SLP(CrL) No. 9361/2021 (II-C)

IA No. 51957/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 157936/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

SLP(CrL) No. 8675/2022 (II-C)

IA No. 138597/2022 - EXEMPTION FROM FILING O.T.
IA No. 138595/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

SLP(CrL) No. 5333-5347/2016 (II-C)

FOR [PERMISSION TO FILE ANNEXURES] ON IA 11524/2016 and IA No. 119882/2017 - PERMISSION TO FILE ADDITIONAL DOCUMENTS
IA No. 119882/2017 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 11524/2016 - PERMISSION TO FILE ANNEXURES

Date : 04-04-2025 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

SLP(CrL.) No. 520/2021

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For Petitioner(s) : Mr. Siddharth Luthra, Sr. Adv.
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For Respondent(s) :Mr. Ashwin Kumar Nair, Adv.
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UPON hearing the counsel the Court made the following
O R D E R

ITEM NO.301-SLP(Crl.) No.520/2021

1. Arguments concluded.
2. Broadly the following questions fall for consideration of this Court:-
 - I. What are the relevant considerations as contemplated by

Section 17A of the Prevention of Corruption Act, 1988 (for short, "the PC Act") which the appropriate authority or government is expected to look into before the grant of approval for initiation of any enquiry, inquiry, or investigation by the police?

II. Whether the considerations which weigh with the appropriate authority or government while granting approval under Section 17A of the PC Act are fundamentally so different from the one that a Magistrate is ordinarily expected to apply while passing an order under Section 156(3) of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") so as to preclude the Magistrate from fulfilling the object underlying Section 17A of the PC Act?

In other words, whether the considerations under Section 17A of the PC Act are of such a nature that they are necessarily beyond the ambit or scope of consideration by a Magistrate while directing an investigation under Section 156(3) of the Cr.P.C.?

III. As a natural corollary of the aforesaid, could it be said that once a Magistrate has applied his mind under Section 156(3) of the Cr.P.C., the requirement of a prior approval under Section 17A of the PC Act is meaningless, redundant and no longer necessary? Could it be said that a police officer, despite a direction under Section 156(3) by a Magistrate, would remain inhibited from

conducting any enquiry, inquiry, or investigation without prior approval as required by Section 17A? If yes, how does the standard of application of mind by the appropriate authority differ from that of the Magistrate?

- IV. In case of a private complaint, whether Section 19 of the PC Act, more particularly parts (i) and (ii) of the First Proviso therein contemplates that sanction would be required only after the Magistrate first completes the stage of examining the complainant and / or causing a magisterial inquiry wherever necessary in terms of Section(s) 200 and 202 of the Cr.P.C. respectively? In other words, whether the three conditions envisaged under the First Proviso, namely that a complaint has been filed as per Part (i) and that the court has not only not dismissed such complaint but also explicitly directed the obtainment of sanction as per Part (ii), necessarily implies that it is open for the Magistrate to proceed in terms of Chapter XV more particularly under Section(s) 200, 202 and 203 even without the grant of sanction under Section 19 of the PC Act? If so, whether such an interpretation is limited only for the purpose of "cognizance" under Section 19 of the PC Act?
- V. Whether, Part (ii) of the First Proviso to Section 19 of the PC Act, more particularly the expression "the court has not dismissed the complaint under section 203" necessarily envisages that the Magistrate ought to have first considered the statements of the complainant and

the witnesses(s) and / or of any magisterial inquiry in terms of Section(s) 200 and 202 of the Cr.P.C.? In other words, could it be said that the Magistrate takes cognizance only after deciding not to dismiss the complaint under Section 203 especially in light of the decision in Legal Remembrancer v. Abani Kumar Banerji, reported in 1950 SCC OnLine Cal 49, which observed thus:-

"9. I have for myself no hesitation in feeling that there is nothing which would justify our referring the matter to the Full Bench. As I read s. 190 of the Code of Criminal Procedure and the subsequent sections, it seems to me to be clear that a magistrate is not bound to take cognizance of an offence, merely because a petition of complaint is filed before him. Mr. Mukherji's argument is that a magistrate cannot possibly take any action with regard to a petition of complaint, without applying his mind to it, and taking cognizance of the offence mentioned in the complaint necessarily takes place, when the magistrate's mind is applied to the petition. Consequently Mr. Mukherji argues, whenever a magistrate takes the action, say, of issuing search warrant or asking the police to enquire and to investigate, he has taken cognizance of the case. In my judgment, this is putting a wrong connotation on the words "taking cognizance". What is "taking cognizance" has not been defined in the Code of Criminal Procedure, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any magistrate has taken cognizance of any offence under s. 190(1)(a) of the Code of Criminal Procedure, he must not only have applied his mind to the contents of the petition, but he must have done so for the

purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter,—proceeding under s. 200, and thereafter sending it for enquiry and report under s. 202. When the magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under s. 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. My conclusion, therefore, is that the learned magistrate is wrong in thinking that the Chief Presidency Magistrate was bound to take cognizance of the case as soon as the petition of complaint was filed.”

(Emphasis supplied)

- VI. Whether it could be said that the First Proviso to Section 19 of the PC Act is detached from the substantive part contained in sub-section (1) of the said provision?
- VII. Whether the requirements introduced by Section 17A and the amended Section 19 of the PC Act could be said to be retrospectively applicable?

Since the aforesaid procedural changes were brought in tandem with the substantive changes in the very offences itself as provided under Section(s) 7, 11, 13 and 15 respectively of the PC Act by way of the 2018 Amendment Act, whether the same necessarily implies that the introduction of Section 17A as-well as the amendment of Section 19 were not merely procedural but also substantive in nature, and thus, only ought to be

applicable prospectively? In other words, whether the conspectus of amendments to the PC Act, i.e., Section(s) 7, 11, 13, 15, 17A and 19 respectively is so intrinsically intertwined with each other in such a manner that they can neither survive without each other nor can they be read in isolation from one another and thus can only be regarded as nothing but substantive in nature?

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

3. Judgment reserved.
4. The learned counsel appearing for the parties shall file their written submissions along with the case law they propose to rely upon not only addressing the issues formulated by this Court but on any other issue also within a period of two weeks from today.
5. So far as the connected petitions are concerned they shall be

looked into after we deliver the judgment in Item No.301 i.e. SLP (Crl.) No.520/2021.

6. The learned counsel appearing in the connected matters may also file their written submissions on the issues arising in the matter(s) which we have heard and concluded.
7. A soft copy of the written submissions shall also be forwarded to writtensubmissions.jbp@gmail.com.

(CHANDRESH)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)