"REPORTABLE"

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1454 OF 2013
(Arising out of SLP (Crl.) No.61 of 2012)

Ajoy Acharya … Appellant

Versus

State Bureau of Inv. against Eco. Offence … Respondent

With

CRIMINAL APPEAL NO.1455 OF 2013
(Arising out of SLP (Crl.) No. 400 of 2012)

J U D G M E N T

Jagdish Singh Khehar, J.

1. Investigation into the affairs of the Madhya Pradesh Industrial Development Corporation (renamed as Madhya Pradesh State Industrial Development Corporation, hereinafter referred to as the 'MPSIDC') was ordered with effect from 3.1.1996, by the State Government. Thereupon, a first information report bearing no. 25 of 2004 was registered under Sections 409, 406, 467, 468 and 120B of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act'). The allegations

levelled in the first information report generally were, that the functionaries of the MPSIDC had permitted investment by way of inter corporate deposits (hereinafter referred to as the 'ICD's') through a resolution of the Board of Directors (of the MPSIDC) dated 19.4.1995. By the instant resolution, the Board (of the MPSIDC) authorized its Managing Director, to extend short term loans (including ICD's) out of the surplus funds with the MPSIDC, on suitable terms and conditions. The gravamen of the accusation was, that the Board of Directors' resolution dated 19.4.1995 was passed in disregard of an earlier decision taken in the Cabinet Review Meeting held on 28.1.1994, wherein a decision was taken that the MPSIDC would not extend financial assistance to industries. The petitioner herein had admittedly attended the said meeting held on 28.1.1994. The accusation also included the insinuation, that after the decision of the Cabinet Review Committee dated 28.1.1994, the Board of Directors (of the MPSIDC) had passed an endorsing resolution dated 31.1.1994, wherein it was resolved by the MPSIDC to stop financing industries, from out of its surplus funds. The petitioner herein had even participated in the instant proceedings held on 31.1.1994. Based on the aforesaid factual position, it was sought to be suggested, that undeterred by the decision during the Cabinet Review Meeting dated 28.1.1994, and the resolution of the Board dated 31.1.1994 (which had prohibited extension of financial assistance to industries), the Board of Directors' resolution dated 19.4.1995, authorized its Managing Director to extend short term loans (including ICD's) to industries, out of surplus funds with the MPSIDC, on suitable terms and conditions. It was also alleged,

that the above controversial Board resolution dated 19.4.1995 was passed in complete disregard to the mandate contained in Section 292 of the Companies Act, 1965. After the aforesaid Board resolution dated 19.4.1995, it was alleged, that the MPSIDC had extended ICD's to a large number of companies, out of which 42 companies had committed default in repayments. In the abovementioned first information report, it was also alleged, that the abovementioned transactions executed by the MPSIDC were illegal and in violation of law.

2. The ICD's referred to in the foregoing paragraph were executed during the period between 1995 and 2004. It was alleged, that four senior functionaries of the MPSIDC who were then members of the Board of Directors of the MPSIDC had deliberately supported the resolution of the Board of Directors dated 19.4.1995, despite the fact that they were aware of the Cabinet Review Meeting decision dated 28.1.1994, as well as, the earlier resolution of the Board of Directors of the MPSIDC dated 31.1.1994. Without their participation and support, it was alleged, that the controversial Board resolution dated 19.4.1995 could not have been passed.

3. It would also be relevant to mention, that allegations were also levelled against 42 defaulting companies in the first information report dated 24.7.2004. The said 42 companies had defaulted by not making repayments of the ICD's released to them, in terms of their contractual obligations. The said first information report, however, did not make any reference to a large number of

other companies in whose favour the MPSIDC had likewise extended ICD's, simply because the companies had returned the loaned amount to the MPSIDC, in consonance with their contractual obligations.

4. A brief description of the four senior functionaries of the MPSIDC, against whom allegations were levelled, is being delineated below:

(I) Rajender Kumar Singh	: He was the then State Minister in the Commerce and Industries Department. He was also the then Chairman of the MPSIDC, having been appointed as such on 7.4.1994.
(ii) Ajoy Acharya	: He was a member of the IAS cadre, belonging to the 1976 batch. While holding the charge of the office of Industries Commissioner, Government of Madhya Pradesh, he was nominated as a Director of the MPSIDC in 1993. He continued as such till 1998. In June 1998, he was transferred as Joint Secretary, Department of Heavy Industries, Government of India, whereupon, he ceased to be on the Board of Directors of the MPSIDC.
(iii) J.M. Ramamurthy	: He was also a member of the IAS cadre. He was appointed as Special Director, on the Board of the MPSIDC in 1993. He retired from the IAS on 30.6.1998. Thereupon, he ceased to be on the Board of Directors of the MPSIDC.
(iv) Munadutt Pillai Rajan	:He was also a member of the IAS cadre. He was appointed as the Managing Director of the MPSIDC. He retired from the IAS on 7.5.2000. Thereupon, he ceased to be the Managing Director of the MPSIDC.

5. The first charge sheet was filed on 24.9.2007. The allegations against the petitioner herein, Ajoy Acharya, were as follows:

> "a) The petitioner was present at the Cabinet Review Meeting dated 28.01.1994 and Board Meeting dated 31.01.1994, where the decision relating to discontinuance of project financing/providing financial assistance was taken, and thus, the instant factual position was within petitioner's personal knowledge."
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> b) The petitioner was present in the Board Meeting dated 19.04.1995 in which the Board Resolution was passed to engage itself in Investments by way of ICD, and also in other Board Meeting after 28.01.1994 where decision relating to equity participation was taken. The petitioner did not object to the passing of these resolutions despite of his having been aware of the contrary decision taken at the Cabinet Review Meeting which was endorsed at the Board Meeting dated 31.1.1994.
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> c) The petitioner did not act bonafidely as the Cabinet Review Meeting had specifically stopped giving of any financial assistance to industries out of the surplus funds available with the MPSIDC.
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> d) The Board Resolution dated 19.04.1995 empowering the Managing Director to invest in ICD was in violation of Section 292 of the Companies Act, and also, in violation of Memorandum of Association and Articles of Association.
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> e) The petitioner facilitated the passing of the aforesaid allegedly illegal Board Resolution, which became the foundation for all illegal ICD's.
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> f) The petitioner facilitated the passing of the resolutions referred to above, by attending the said Board Meetings, wherein he did not object to the proposed resolutions in the Board Meetings."

6. The first charge sheet dated 22.9.2007 was filed in Special Case no. 7 of 2007, and the Special Judge, Bhopal, took cognizance thereof. It is the contention of the petitioner Ajoy Acharya, that upon his having perused the charge sheet dated 22.9.2007 (and the documents enclosed therewith), he learnt that no sanction was applied for or obtained, before initiation of the above

prosecution against him. Under the belief, that prior sanction was a pre-requisite under Section 19 of the PC Act, as well as, under Section 197 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'CrPC'), the petitioner filed a petition under Section 239 of the CrPC (as well as, Section 19 of the PC Act) seeking discharge on the ground, that prosecution had been initiated against him without seeking sanction of the competent authority. The petition filed under Section 239 of the CrPC was dismissed by the Special Judge, Bhopal, on 11.4.2008.

7. Dissatisfied with the aforesaid order dated 11.4.2008, the petitioner preferred Criminal Revision Petition no. 1422 of 2008, in the High Court of Madhya Pradesh (before its principal seat at Jabalpur, hereinafter referred to as the 'High Court'). The aforesaid Criminal Revision Petition was dismissed by a Division Bench of the High Court on 29.8.2011. Aggrieved by the order passed by the Special Judge, Bhopal (dated 11.4.2008), and the order passed by the High Court (dated 29.8.2011), the petitioner preferred Petition for Special Leave to Appeal (Criminal) no. 61 of 2012. This Court issued notice in the above matter (as also in a connected matter i.e., Special Leave to Appeal (Criminal) no. 400 of 2012) on 6.1.2012. While issuing notice, an interim order came to be passed on 6.1.2012, staying proceedings before the Special Judge, Bhopal (in Special Case no. 7 of 2007).

8. We have concluded hearing in the matter. Leave is granted.

9. We shall endeavour to first adjudicate the principal contention advanced at the hands of the appellant, namely, that the initiation of prosecution against the

appellant was not sustainable in law, since sanction of the competent authority was not obtained before cognizance in the matter was taken. The particulars of the allegations levelled against the appellant in the charge sheet filed against him (and others) are irrelevant for the determination of the present controversy. We have already recorded hereinabove briefly, an outline of the controversy which resulted in the filing of the charge sheet (dated 22.9.2007) involving the appellant. Despite our above determination, it is imperative at the cost of repetition to notice, that the pointed allegation in respect of the appellant's culpability is drawn from the resolution of the Board of Directors of the MPSIDC dated 19.4.1995. For all intents and purposes, therefore, our determination on the merits of the controversy, will be based on the culpability of the appellant on account of his participation in the meeting of the Board of Directors, wherein the resolution dated 19.4.1995 was passed, without his having objected to the same.

10. Having recorded the cause for his being arrayed as an accused, the next step in the process of the present adjudication is to determine whether the participation of the appellant in the meetings in question was based on his position as a nominee Director on the Board of Directors of the MPSIDC, and/or in his capacity as a member of the IAS cadre allocated to the State of Madhya Pradesh. The above determination, would make all the difference to the outcome on the principal issue canvassed on behalf of the appellant. If the appellant's position as nominee director of the MPSIDC was abused, then the holding of the said position itself would be relevant for deciding the present

controversy. If however, the office of Industries Commissioner, Government of Madhya Pradesh was abused, the consideration would be different. In the latter situation, the appellant being a member of the IAS cadre, his said position would necessarily have a relevant nexus to the issue in hand. It is essential to notice, that besides being a nominee Director of the Board of Directors of the MPSIDC, the appellant was simultaneously nominated as a Director of six other companies. The nomination of the appellant as Director in the other companies (besides the MPSIDC), has no nexus to the allegations levelled against him in the charge sheet dated 22.9.2007. However, there is some doubt about the fact, whether the appellant participated in the controversial meeting of the Board of Directors (of the MPSIDC) only because of his holding the office of Industries Commissioner of the Government of Madhya Pradesh, which position he occupied as a member of the IAS cadre of the State of Madhya Pradesh.

11. The case set up by the appellant was, that it was mandatory for the prosecution to obtain sanction before initiating prosecution against him, as he held a government post, namely, the post of Industries Commissioner, Government of Madhya Pradesh. It was also submitted on the appellant's behalf, that he was a public servant, and the President of India was his appointing authority, as also his dismissing authority. Even while he was discharging his duties as Industries Commissioner, Government of Madhya Pradesh, and thereafter, when he had proceeded on appointment by way of deputation to the Central Government, his appointing and dismissing authorities

remained the same. Insofar as his being nominated as a Director on the Board of the MPSIDC is concerned, the case set up by the appellant was, that his nomination co-existed with his appointment as Industries Commissioner, Government of Madhya Pradesh. In this behalf it was asserted, that his being nominated as a Director (with the MPSIDC) was the outcome/consequence/result of his holding the office of Industries Commissioner, Government of Madhya Pradesh. It was submitted, that had he not held the office of Industries Commissioner, he would not have been nominated as a Director (with the MPSIDC). It was further asserted, that consequent upon his appointment by way of deputation to the Central Government, his successor on the post of Industries Commissioner, came to be nominated as a Director on the Board of the MPSIDC. It was therefore, sought to be canvassed, that the appellant's nomination as Director of the Board of the MPSIDC, was a fallout/sequel of his appointment as Industries Commissioner, Government of Madhya Pradesh. It was accordingly his contention, that he continued to occupy the same position as he had occupied while holding the office of Industries Commissioner, Government of Madhya Pradesh, even after cognizance was taken by the Special Judge, Bhopal. The submission projected was premised on the foundation, that the offices held by the appellant were the outcome of his appointment to the IAS cadre. As such, according to the appellant, his participation in the proceedings of the Board of Directors culminating in its resolution dated 19.4.1995, must be deemed to have been taken in his capacity as a member of the IAS cadre.

12. On the pleas canvassed at the hands of the learned counsel for the appellant, as have been noticed in the foregoing paragraph, there can be no doubt that merely the position held by the appellant as Commissioner Industries, Government of Madhya Pradesh, would not have vested in him the right to participate in the affairs of the MPSIDC. It was only on account of the nomination of the appellant as director of the MPSIDC, that vested in him the authority to participate in the controversial meeting where the MPSIDC passed its resolution dated 19.4.1995. Likewise, his nomination as a Director in six other companies did not vest in him any right whatsoever, to deal with the affairs of the MPSIDC. It is only on account of his being a nominee Director of the MPSIDC, that he assumed the responsibility and the power, to deal with the affairs of the MPSIDC. His participation in the proceedings of the Board of Directors which passed its resolution dated 19.4.1995 was therefore exclusively on account of his having been nominated as a Director on the Board of the MPSIDC. We must therefore, first endeavour, to deal with the credibility of the submission canvassed on behalf of the appellant, that the appellant's nomination as Director (with the MPSIDC) was the outcome of his holding the office of Industries Commissioner, Government of Madhya Pradesh. It was not disputed during the course of hearing, that the appellant's nomination as Director (with the MPSIDC) emerges from clause 89(2) of the Memorandum and Articles of Association of the MPSIDC. Clause 89 aforementioned is being extracted hereunder:

"89 (1) The number of Directors shall not be less than three and more than twelve but the number can be increased or decreased by the Governor subject to the provisions of the Act.

(2) Unless otherwise determined by the Governor from time to time not more than five Directors shall be nominated by the Governor so long as the Government's share does not exceed Rs.26 lakhs. In the event of Government's share exceeding this amount, the number of Directors to be nominated by the Governor will increase. The number of Directors so increased will be in proportion to the Government's share in excess of Rs.26 lakhs and the shares held by persons other than Government. The Directors other than those nominated by the Governor shall be appointed by the Company in the general meeting.

(3) The tenure of all Directors including Chairman and excluding Managing Director shall be for the period as fixed or determined by the State Government from time to time. The Managing Director shall retire on his ceasing to hold the office of the Managing Director. A retiring Director shall be eligible for reappointment.

(4) The Governor shall have the power to remove any Director appointed and nominated by him including the Chairman and the Managing Director from Office at any time in his absolute discretion.

(5) The Governor shall have the right to fill any vacancy in the Office of a Director caused by retirement, removal, resignation, death or otherwise of the Directors nominated/appointed by him.

A perusal of sub-clause (2) of clause 89 reveals, that nominee Directors to the MPSIDC are appointed by the Governor. The Governor (under sub-clause (4) extracted above) is also vested with the absolute discretion to remove a nominee Director. But what needs emphasis is, that clause 89 of the Memorandum and Articles of Association of the MPSIDC, does not contemplate that the Industries Commissioner, Government of Madhya Pradesh would necessarily, or automatically, or as a matter of course, must be nominated as Director of the MPSIDC. Likewise, clause 89 aforementioned, does not require a nominee

director to be drawn out of members of the IAS cadre. In fact, in our view, the Governor under clause 89 has the absolute discretion to nominate anyone suitable as per his wisdom, as nominee Director to the MPSIDC. In the above view of the matter, it is not possible to accept, that the appellant's nomination as Director of the MPSIDC, was the outcome of his holding the office of Industries Commissioner, Government of Madhya Pradesh, or on account of his being a member of the IAS cadre. In the above view of the matter it is natural to conclude, that the participation of the appellant in the meeting of the Board of Directors of the MPSIDC on 19.4.1995 was not on account of his holding the office of Industries Commissioner, Government of Madhya Pradesh, or on account of his being a member of the IAS cadre. Having so concluded, we shall now endeavour to determine, on the basis of the law declared by this Court, the veracity of the assertion made by the appellant, that prior sanction was mandatory, and in its absence, the prosecution initiated against the appellant should be considered to be without jurisdiction.

13. We shall first endeavour to deal with the law declared by this Court on the proposition being canvassed before us. In this behalf, reference may first of all be made to R.S. Naik vs. A.R. Antulay, (1984) 2 SCC 183. Observations made by this Court, as are relevant to the proposition canvassed on behalf of the appellant, are being extracted hereunder :

> "21. Re: (b) and (c): It was strenuously contended that if the accused has held or holds a plurality of offices occupying each one of which makes him a public servant, sanction of each one of the competent authorities entitled

to remove him from each one of the offices held by him, would be necessary and if anyone of the competent authorities fails or declines to grant sanction, the court is precluded or prohibited from taking cognizance of the offence with which the public servant is charged. This submission was sought to be repelled urging that it is implicit in Section 6 that sanction of that authority alone is necessary which is competent to remove the public servant from the office which he is alleged to have misused or abused for corrupt motives. Section 6(1)(c) is the only provision relied upon on behalf of the accused to contend that as M.L.A. he was a public servant on the date of taking cognizance of the offences, and therefore, sanction of that authority competent to remove him from that office is a sine qua non for taking cognizance of offences. Section 6 (1)(c) bars taking cognizance of an offence alleged to have been committed by public servant except with the previous sanction of the authority competent to remove him from his office.

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23. Offences prescribed in Sections 161, 164 and 165 IPC and Section 5 of the 1947 Act have an intimate and inseparable relation with the office of a public servant. A public servant occupies office which renders him a public servant and occupying the office carries with it the powers conferred on the office. Power generally is not conferred on an individual person. In a society governed by rule of law power is conferred on office or acquired by statutory status and the individual occupying the office or on whom status is conferred enjoys the power of office or power flowing from the status. The holder of the office alone would have opportunity to abuse or misuse the office. These sections codify a well-recognised truism that power has the tendency to corrupt. It is the holding of the office which gives an opportunity to use it for corrupt motives. Therefore, the corrupt conduct is directly attributable and flows from the power conferred on the office. This interrelation and interdependence between individual and the office he holds is substantial and not severable. Each of the three clauses of sub-section (1) of Section 6 uses the expression 'office' and the power to grant sanction is conferred on the authority competent to remove the public servant from his office and Section 6 requires a sanction before taking cognizance of offences committed by public servant. The offence would be committed by the public servant by misusing or abusing the power of office and it is from that office, the authority must be competent to remove him so as to be entitled to grant sanction. The removal would bring about cessation of interrelation between the office and abuse by the holder of the office. The link between power with opportunity to abuse and the holder of office would be severed by removal from office. Therefore, when a public servant is accused of an offence of taking gratification other than legal remuneration for doing or forbearing to do an official act (Section 161 IPC)

or as a public servant abets offences punishable under Sections 161 and 163 (Section 164 IPC) or as public servant obtains a valuable thing without consideration from person concerned in any proceeding or business transacted by such public servant (Section 165 IPC) or commits criminal misconduct as defined in Section 5 of the 1947 Act, it is implicit in the various offences that the public servant has misused or abused the power of office held by him as public servant. The expression 'office' in the three sub-clauses of Section 6(1) would clearly denote that office which the public servant misused or abused for corrupt motives for which he is to be prosecuted and in respect of which a sanction to prosecute him is necessary by the competent authority entitled to remove him from that office which he has abused. This interrelation between the office and its abuse if severed would render Section 6 devoid of any meaning. And this interrelation clearly provides a clue to the understanding of the provision in Section 6 providing for sanction by a competent authority who would be able to judge the action of the public servant before removing the bar, by granting sanction, to the taking of the cognizance of offences by the court against the public servant. Therefore, it unquestionably follows that the sanction to prosecute can be given by an authority competent to remove the public servant from the office which he has misused or abused because that authority alone would be able to know whether there has been a misuse or abuse of the office by the public servant and not some rank outsider. By a catena of decisions, it has been held that the authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before according sanction. A grant of sanction is not an idle formality but a solemn and sacrosanct act which removes the umbrella of protection of government servants against frivolous prosecutions and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched against public servants. (See Mohd. Iqbal Ahmad v. State of Andhra Pradesh, [1979] 2 S.C.R. 1007). The Legislature advisedly conferred power on the authority competent to remove the public servant from the office to grant sanction for the obvious reason that that authority alone would be able, when facts and evidence are placed before him, to judge whether a serious offence is committed or the prosecution is either frivolous or speculative. That authority alone would be competent to judge whether on the facts alleged, there has been an abuse or misuse of office held by the public servant. That authority would be in a position to know what was the power conferred on the office which the public servant holds, how that power could be abused for corrupt motive and whether prima facie it has been so done. That competent authority alone would know the nature and functions discharged by the public servant holding the office and whether the same has been abused or misused. It is the vertical hierarchy between the authority competent to remove the public servant from that office and the nature of the office held by the public servant against whom sanction is

sought which would indicate a hierarchy and which would therefore, permit inference of knowledge about the functions and duties of the office and its misuse or abuse by the public servant. That is why the legislature clearly provided that that authority alone would be competent to grant sanction which is entitled to remove the public servant against whom sanction is sought from the office.

24. Now if the public servant holds two offices and he is accused of having abused one and from which he is removed but continues to hold the other which is neither alleged to have been used nor abused, is a sanction of the authority competent to remove him from the office which is neither alleged or shown to have been abused or misused necessary? The submission is that if the harassment of the public servant by a frivolous prosecution and criminal waste of his time in law courts keeping him away from discharging public duty, are the objects underlying Section 6, the same would be defeated if it is held that the sanction of the latter authority is not necessary. The submission does not commend to us. We fail to see how the competent authority entitled to remove the public servant from an office which is neither alleged to have been used or abused would be able to decide whether the prosecution is frivolous or tendentious. An illustration was posed to the learned counsel that a Minister who is indisputably a public servant greased his palms by abusing his office as Minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and therefore, sanction as contemplated by Section 6 would not be necessary; but if after committing the offence and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant Municipal law, and was holding that office on the date on which court proceeded to take cognizance of the offence committed by him as a Minister, would a sanction be necessary and that too of that authority competent to remove him from the office of the Municipal President. The answer was in affirmative. But the very illustration would show that such cannot be the law. Such an interpretation of Section 6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and thereby defeat the process of law. One can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant under Section 21 IPC and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of 11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant, while abusing one office which he may have ceased to hold. Such

an interpretation is contrary to all canons of construction and leads to an absurd and product which of necessity must be avoided. Legislation must at all costs be interpreted in such a way that it would not operate as a rougue's charter. (See Davis & Sons Ltd. v. Atkins)

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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 M.L.A. Therefore, it is crystal clear that the complaint filed against the accused charged him with criminal abuse or misuse of only his office as Chief Minister. By the time, the court was called upon to take cognizance of the offences, so alleged in the complaint, the accused had ceased to hold the office of the Chief Minister. On this short ground, it can be held that no sanction to prosecute him was necessary as former Chief Minister of Maharashtra State. The appeal can succeed on this short ground. However, as the real bone of contention between the parties was whether as M.L.A. the accused was a public servant and the contention was canvassed at some length, we propose to deal with the same.

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68. Re. (f) & (g): The learned Judge after recording a finding that M.L.A. is a public servant within the comprehension of clause (12)(a) and further recording the finding that as on the date on which the Court was invited to take cognizance, the accused was thus a public servant proceeded to examine whether sanction under Section 6 of the 1947 Act is a pre-requisite to taking cognizance of offences enumerated in Section 6 alleged to have been committed by him. He reached the conclusion that a sanction is necessary before cognizance can be taken. As a corollary he proceeded to investigate and identify, which is the sanctioning authority who would be able to give a valid sanction as required by Section 6 for the prosecution of the accused in his capacity as M.L.A.? We have expressed our conclusion that where offences as set out in Section 6 are alleged to have been committed by a public servant, sanction of only that authority would be necessary who would be entitled to remove him from that office which is

alleged to have been misused or abused for corrupt motives. If the accused has ceased to hold that office by the date, the court is called upon to take cognizance of the offences alleged to have been committed by such public servant, no sanction under Section 6 would be necessary despite the fact that he may be holding any other office on the relevant date which may make him a public servant as understood in Sec 21, if there is no allegation that office has been abused or misused for corrupt motives. The allegations in the complaint are all to the effect that the accused misused or abused his office as Chief Minister for corrupt motives. By the time the Court was called upon to take cognizance of those offences, the accused had ceased to hold the office of Chief Minister. The sanction to prosecute him was granted by the Governor of Maharashtra but this aspect we consider irrelevant for concluding that no sanction was necessary to prosecute him under Section 6 on the date on which the court took cognizance of the offences alleged to have been committed by the accused. Assuming that as MLA the accused would be a public servant under Section 21, in the absence of any allegation that he misused or abused his office as MLA that aspect becomes immaterial. Further Section 6 postulates existence of a valid sanction for prosecution of a public servant for offences punishable under Sections 161, 164, 165 IPC and Section 5 of the 1947 Act, if they are alleged to have been committed by a public servant. In view of our further finding that M.L.A. is not a public servant within the meaning of the expression in Section 21 IPC no sanction is necessary to prosecute him for the offences alleged to have been committed by him."

(emphasis is ours)

The conclusions drawn by this Court in R.S. Naik's case (supra) were affirmed by this Court in Prakash Singh Badal vs. State of Punjab, (2007) 1 SCC 1, wherein this Court held as under:

"23. Offences prescribed in Sections 161, 164 and 165 IPC and Section 5 of the 1947 Act have an intimate and inseparable relation with the office of a public servant. A public servant occupies office which renders him a public servant and occupying the office carries with it the powers conferred on the office. Power generally is not conferred on an individual person. In a society governed by the rule of law power is conferred on office or acquired by statutory status and the individual occupying the office or on whom status is conferred enjoys the power of office or power flowing from the status. The holder of the office alone would have opportunity to abuse or misuse the

office. These sections codify a well-recognised truism that power has the tendency to corrupt. It is the holding of the office which gives an opportunity to use it for corrupt motives. Therefore, the corrupt conduct is directly attributable and flows from the power conferred on the office. This interrelation and interdependence between individual and the office he holds is substantial and not severable. Each of the three clauses of Sub-section (1) of Section 6 uses the expression 'office' and the power to grant sanction is conferred on the authority competent to remove the public servant from his office and Section 6 requires a sanction before taking cognizance of offences committed by public servant. The offence would be committed by the public servant by misusing or abusing the power of office and it is from that office, the authority must be competent to remove him so as to be entitled to grant sanction. The removal would bring about cessation of interrelation between the office and abuse by the holder of the office. The link between power with opportunity to abuse and the holder of office would be severed by removal from office. Therefore, when a public servant is accused of an offence of taking gratification other than legal remuneration for doing or forbearing to do an official act (Section 161 IPC) or as a public servant abets offences punishable under Sections 161 and 163 (Section 164 IPC) or as public servant obtains a valuable thing without consideration from person concerned in any proceeding or business transacted by such public servant (Section 165 IPC) or commits criminal misconduct as defined in Section 5 of the 1947 Act, it is implicit in the various offences that the public servant has misused or abused the power of office held by him as public servant. The expression 'office' in the three Sub-clauses of Section 6(1) would clearly denote that office which the public servant misused or abused for corrupt motives for which he is to be prosecuted and in respect of which a sanction to prosecute him is necessary by the competent authority entitled to remove him from that office which he has abused. This interrelation between the office and its abuse if severed would render Section 6 devoid of any meaning. And this interrelation clearly provides a clue to the understanding of the provision in Section 6 providing for sanction by a competent authority who would he able to judge the action of the public servant before removing the bar, by granting sanction, to the taking of the cognizance of offences by the court against the public servant. Therefore, it unquestionably follows that the sanction to prosecute can he given by an authority competent to remove the public servant from the office which he has misused or abused because that authority alone would be able to know whether there has been a misuse or abuse of the office by the public servant and not some rank outsider. By a catena of decisions, it has been held that the

authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before according sanction. A grant of sanction is not an idle formality but a solemn and sacrosanct act which removes the umbrella of protection of Government servants against frivolous prosecutions and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched against public servants. (See Mohd. Iqbal Ahmad v. State of A.P., (1979) 4 SCC 172). The Legislature advisedly conferred power on the authority competent to remove the public servant from the office to grant sanction for the obvious reason that that authority alone would be able, when facts and evidence are placed before him, to judge whether a serious offence is committed or the prosecution is either frivolous or speculative. That authority alone would be competent to judge whether on the facts alleged, there has been an abuse or misuse of office held by the public servant. That authority would be in a position to know what was the power conferred on the office which the public servant holds, how that power could he abused for corrupt motive and whether prima facie it has been so done. That competent authority alone would know the nature and functions discharged by the public servant holding the office and whether the same has been abused or misused. It is the vertical hierarchy between the authority competent to remove the public servant from that office and the nature of the office held by the public servant against whom sanction is sought which would indicate a hierarchy and which would therefore, permit inference of knowledge about the functions and duties of the office and its misuse or abuse by the public servant. That is why the Legislature clearly provided that that authority alone would be competent to grant sanction which is entitled to remove the public servant against whom sanction is sought from the office.

24. Now if the public servant holds two offices and he is accused of having abused one and from which he is removed but continues to hold the other which is neither alleged to have been used (sic) nor abused, is a sanction of the authority competent to remove him from the office which is neither alleged or shown to have been abused or misused necessary? The submission is that if the harassment of the public servant by a frivolous prosecution and criminal waste of his time in law courts keeping him away from discharging public duty, are the objects underlying Section 6, the same would be defeated if it is held that the sanction of the latter authority is not necessary. The submission does not commend to us. We fail to see how the competent authority entitled to remove the public servant from an office which is neither alleged to have been used (sic) or abused would be able to decide whether the prosecution is frivolous or

tendentious. An illustration was posed to the Learned Counsel that a Minister who is indisputably a public servant greased his palms by abusing his office as Minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and therefore, sanction as contemplated by Section 6 would not be necessary; but if after committing the offence and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant Municipal law, and was holding that office on the date on which court proceeded to take cognizance of the offence committed by him as a Minister, would a sanction be necessary and that too of that authority competent to remove him from the office of the Municipal President. The answer was in affirmative. But the very illustration would show that such cannot be the law. Such an interpretation of Section 6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and thereby defeat the process of law. One can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant under Section 21 IPC and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of 11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant, while abusing one office which he may have ceased to hold. Such an interpretation is contrary to all canons of construction and leads to an absurd and product which of necessity must be avoided. Legislation must at all costs be interpreted in such a way that it would not operate as a rougue's charter. (See W. Davis & Sons Ltd. v. Atkins, (1977) 3 All ER 40.

50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence."

(emphasis is ours)

14. The judgments referred to in paragraph 13 above, were relied upon by the Courts below to reject the contention advanced at the hands of the appellant, that

sanction was essential before the appellant could be prosecuted. It would be pertinent to mention, that extracts from the judgments referred to in paragraph 13 reproduced above, deal with two pointed situations. Firstly, whether sanction before prosecution is required from each of the competent authorities entitled to remove an accused from the offices held by him, in situations wherein the accused holds a plurality of offices. The second determination was in respect of the requirement of sanction, in situations where the accused no longer holds the office, which he is alleged to have abused/misused, for committing the offence (s) for which he is being blamed. In answer to the first query, it has unambiguously been concluded, that if an accused holds a plurality of offices, each one of which makes him a public servant, sanction is essential only at the hands of the competent authority (entitled to remove him from service) of the office which he had allegedly misused. This leads to the clear inference, that other public offices held by the accused wherein an accused holds a plurality of offices, are irrelevant for purposes of obtaining sanction prior to prosecution. On the second issue it was concluded, that sanction was essential only if, at the time of taking cognizance, the accused was still holding the public office which he had allegedly abused. If the legal position determined in the above judgments is taken into consideration, there is certainly no doubt, that in the facts and circumstances of this case, sanction if required, ought to have been obtained from the Governor of the State of Madhya Pradesh. The instant determination is premised on the fact, that the appellant is stated to have misused his position while discharging his responsibilities as a nominee Director of the MPSIDC. It is

clear to us, specially from the deliberation recorded hereinabove, that the appellant's participation in the Cabinet Review Meeting dated 28.1.1994, and in the relevant meetings of the Board of Directors (of the MPSIDC) had no nexus to the post of Industries Commissioner, Government of Madhya Pradesh, or the subsequent office held by him as Joint Secretary, Department of Heavy Industries, Government of India. Accordingly, in our considered view, sanction of the authorities with reference to the post of Industries Commissioner, Government of Madhya Pradesh and Joint Secretary, Department of Heavy Industries, Government of India held by the appellant, was certainly not required. We therefore, hereby reject the submission advanced at the hands of the learned counsel for the appellant, that since the appellant continued to hold the above-mentioned public office(s) in his capacity as a member of the IAS cadre, at the time the first charge sheet was filed on 24.9.2007, prosecution could be proceeded with, and cognizance taken, only upon sanction by the competent authority(ies) of the said two offices (Industries Commissioner, Government of Madhya Pradesh and Joint Secretary, Department of Heavy Industries, Government of India), as wholly misconceived.

15. The abuse/misuse of authority, alleged against the appellant pertains to the discharge of his responsibilities as a nominee Director (on the Board of the MPSIDC). Therefore, the further question which arises for our consideration is, whether sanction at the hands of the Governor of the State of Madhya Pradesh, (who had the power to remove any Director appointed or nominated by him

under clause 89 of the Memorandum and Articles of Association of the MPSIDC), was a prerequisite before taking cognizance in the matter. In the facts and circumstances of this case, we are of the view, that answer to the instant question has also to be in the negative. Our aforesaid determination is based on the fact that the appellant remained a nominee Director of the MPSIDC from 1993 to 1998. The first charge sheet in the matter was filed on 24.9.2007. Well before the filing of the first charge sheet, the appellant had relinquished charge of the office which he is alleged to have abused/misused (i.e. the office of nominee Director of the MPSIDC). In the above view of the matter, since the appellant was not holding the public office which he is alleged to have abused, when the first charge sheet was filed, in terms of the law declared by this Court (referred to in the judgments extracted in paragraph 13 above), there was no need to obtain any sanction before proceeding to prosecute the appellant, for the offences alleged against him.

16. It would be relevant to mention, that during the course of hearing learned counsel for the appellant placed emphatic reliance on the judgment rendered by this Court in State of Madhya Pradesh vs. Sheetla Sahai & Ors., (2009) 8 SCC 617. It is not necessary for us to refer either to the factual position in the judgment relied upon, or even the conclusions recorded thereon. We say so because, the issues canvassed and determined in the aforesaid judgments were not the ones on the basis whereof we have recorded our conclusions, in the foregoing paragraphs. It is sufficient for us to note, that the judgment rendered

by this Court in State of Madhya Pradesh vs. Sheetla Sahai & Ors. (supra), does not carve out any exception, to the two propositions relied upon for the conclusions drawn by us, from the judgments referred to in paragraph 13 above.

17. The second contention advanced at the hands of the learned counsel for the appellant, was based on the determination rendered by this Court in Soma Chakravarty vs. State through CBI, (2007) 5 SCC 403. Pointed reliance was placed by the learned counsel for the appellant on paragraph 23 which is being extracted hereunder:-

> "23. In a case of this nature, the learned Special Judge also should have considered the question having regard to the 'doctrine of parity' in mind. An accused similarly situated has not been proceeded against only because, the departmental proceedings ended in his favour. Whether an accused before him although stands on a similar footing despite he having not been departmentally proceeded against or had not been completed exonerated also required to be considered. If exoneration in a departmental proceeding is the basis for not framing a charge against an accused person who is said to be similarly situated, the question which requires a further consideration was as to whether the applicant before it was similarly situated or not and/or whether the exonerated officer in the departmental proceeding also faced same charges including the charge of being a party to the larger conspiracy."
>
> (emphasis is ours)

It was the vehement contention of the learned counsel for the appellant, that sanction to prosecute another co-accused similarly situated as the appellant, having been obtained, it was not permissible to treat the appellant differently. We find no substance in the second contention advanced at the hands of the learned counsel for the appellant. Having concluded on the basis of the law declared by this Court, that prior sanction for prosecuting the appellant was

unessential, it is futile to suggest that sanction ought to have been obtained all the same. The instant submission needs no further consideration in view of the deliberations recorded by us hereinabove. Parity in law can be claimed only in respect of action rightfully executed. And not otherwise. Having concluded that sanction was not required in the case of the appellant, it is not possible for us to accept on the analogy of the submission advanced at the hands of the learned counsel for the appellant, that merely because sanction was obtained in respect of another co-accused, it needed to have been obtained in the appellant's case as well.

18. The next contention advanced at the hands of the learned counsel for the appellant was based on Section 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act'). Section 141 aforementioned is being extracted hereunder:-

> "**141. Offences by companies.-** (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:
>
> Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

> (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
>
> Explanation.--For the purposes of this section,--
>
> (a) "company" means any body corporate and includes a firm or other association of individuals; and
>
> (b) "director", in relation to a firm, means a partner in the firm."

Relying on sub-Section (1) of Section 141 extracted above, it was the vehement contention of the learned counsel for the appellant, that the appellant was not in charge of the conduct of the business of the MPSIDC. It was also his submission, that the appellant was not responsible to the MPSIDC for the conduct of its day to day activities. In this behalf it was sought to be asserted, that the appellant was not aware of the fact, that the functionaries of the MPSIDC were extending short term loans (including ICD's) out of the surplus funds of the MPSIDC to industrial establishments. It was also pointed out, that the appellant had neither examined nor approved any financial assistance extended to industries, out of the surplus funds of the MPSIDC, on the basis of the resolution of the Board of Directors dated 19.4.1995. As such it was asserted, that the accusations levelled against the appellant were misconceived. Insofar as the instant aspect of the matter is concerned, learned counsel for the appellant relied on the decision rendered by this Court in National Small Industries Corporation

Ltd. vs. Harmeet Singh Paintal & Anr., (2010) 3 SCC 330. Learned counsel invited our pointed attention to the following observations recorded therein:-

> "6. In the connected appeal, the appellant - DCM Financial Services Ltd., entered into a hire purchase agreement on 25.2.1996 with M/s International Agro Allied Products Ltd. At the time of entering into contract, the Company handed over post-dated cheques to the appellant towards payment of monthly hire/rental charges. Respondent No. 1, Dev Sarin was one of the Directors of the said Company. The cheque issued by International Agro and Allied Products Ltd. in favour of the appellant was duly presented for payment on 28.10.1998 and the same was returned unpaid for the reason that the Company had issued instructions to the bankers stopping payment of the cheque.
>
> 12. It is very clear from the above provision that what is required is that the persons who are sought to be made vicariously liable for a criminal offence under Section 141 should be, at the time the offence was committed, was in-charge of, and was responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. Only those persons who were in-charge of and responsible for the conduct of the business of the company at the time of commission of an offence will be liable for criminal action. It follows from the fact that if a Director of a Company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable for a criminal offence under the provisions. The liability arises from being in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company."
>
> (emphasis is ours)

19. We have given our thoughtful consideration to the contention advanced at the hands of the learned counsel for the appellant, as has been noticed in the foregoing paragraph. We are of the view, that the appellant's reliance on Section 141 of the NI Act, as also, the judgment rendered by this Court in National Small

Industries Corporation Ltd. (supra), is misconceived. The appellant is not being blamed for the implementation of the resolution of the Board of Directors of the MPSIDC dated 19.4.1995. The appellant is being blamed for having allowed the aforesaid resolution dated 19.4.1995 to be passed despite the earlier decision taken in the Cabinet Review Meeting held on 28.1.1994, as also, the earlier resolution of the Board of Directors of the MPSIDC dated 31.1.1994. It is not a matter of dispute before us, that the appellant had participated in the decision making process in the meeting of the Cabinet Review Committee dated 28.1.1994, as also, the resolution of the Board of Directors of the MPSIDC dated 31.1.1994. The charge against the appellant is based on the fact, that the appellant allowed the Board of Directors of the MPSIDC to pass the resolution dated 19.4.1995, inspite of the earlier decisions at the hands of the Cabinet Review Committee (in meeting dated 18.1.1994) and the consequential resolution of the Board of Directors (dated 31.1.1994). We, therefore, reject the submission advanced at the hands of the learned counsel for the appellant based on Section 141 of the NI Act. All the same, it would be relevant to notice, that the second proviso under Section 141(1) of the N.I. Act is inapplicable to the facts of this case, because the appellant was not nominated as a Director of the MPSIDC on account of holding the office of Industries Commissioner, Government of Madhya Pradesh. The appellant's appointment as nominee Director of the MPSIDC was based on the determination of the Governor of Madhya Pradesh under clause 89 of the Memorandum and Articles of Association of the MPSIDC. If the factual position alleged against the appellant is correct, the culpability of the

appellant would emerge from sub-Section (2) of Section 141 of the N.I. Act. The instant inference is inevitable, because it is not disputed on behalf of the appellant, that he had actually participated in the Cabinet Review Meeting dated 28.1.1984, as well as, in the meetings of the Board of Directors leading to the passing of the resolutions dated 31.1.1994 and 19.4.1995. In the facts of the present case, the accusation implicating the appellant, is directly attributable to the appellant, as nominee Director of the MPSIDC. The aforesaid inference has been drawn by us, to negate the submission of the learned counsel for the appellant based on Section 141 of the N.I. Act. In our view, the instant issue does not arise for adjudication in the present controversy in view of the conclusions already drawn hereinabove, that the culpability of the appellant, lies in the mischief of passing the resolution dated 19.4.1995. The implementation of the said resolution is the consequential effect of the said mischief.

20. For the last contention advanced on behalf of the appellant, learned counsel placed reliance on a decision rendered by this Court in C.K. Jaffer Sharief vs. State (through CBI), (2013) 1 SCC 205. Our pointed attention was drawn to the following observations recorded therein:-

> "17. It has already been noticed that the appellant besides working as the Minister of Railways was the Head of the two public sector undertakings in question at the relevant time. It also appears from the materials on record that the four persons while in London had assisted the appellant in performing certain tasks connected with the discharge of duties as a Minister. It is difficult to visualise as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the appellant can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing

> or pecuniary advantage either for himself or for any of the aforesaid four persons. If the statements of the witnesses examined under Section 161 Cr.P.C. show that the aforesaid four persons had performed certain tasks to assist the Minister in the discharge of his public duties, however insignificant such tasks may have been, no question of obtaining any pecuniary advantage by any corrupt or illegal means or by abuse of the position of the appellant as a public servant can arise. As a Minister it was for the appellant to decide on the number and identity of the officials and supporting staff who should accompany him to London if it was anticipated that he would be required to perform his official duties while in London. If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundance it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant. A similar view has also been expressed by this Court in M. Narayanan Nambiar v. State of Kerala, AIR 1963 SC 1116 while considering the provisions of Section 5 of Act of 1947."
>
> (emphasis is ours)

Based on the aforesaid determination, it was the contention of the learned counsel for the appellant, that the allegations levelled against the appellant do not lead to the inference, that the appellant had adopted corrupt or illegal means, or had abused his position as a public servant to obtain any valuable thing or pecuniary advantage, either for himself or for the industries to whom the MPSIDC extended short term loans (including ICD's). We are of the view, that the last contention advanced at the hands of the learned counsel for the appellant is a mixed question of fact and law. Determination of the instant issue would be possible only after the rival parties have adduced evidence to establish their respective claims. At the said juncture, it would be possible to record factual conclusions. It would then be possible for the concerned Court(s) to draw

inferences on the basis of the established factual position, whether the accused is guilty of the accusation levelled against him. Therefore, it is neither proper nor possible for us to deal with the last contention advanced at the hands of the learned counsel for the appellant, at the present juncture.

21. No further contention was advanced at the hands of the learned counsel for the appellant.

22. For the reasons recorded hereinabove, we find no merit in the instant appeals. The same are accordingly hereby dismissed. While disposing of the instant appeals, we consider it just and appropriate to direct the trial Court to expedite the trial, keeping in mind, that the charge sheet in the matter was filed as far back as in 2007. On account of the proceedings initiated at the hands of the appellant, no further proceedings were taken by the Special Judge, Bhopal. In the above view of the matter, we consider it appropriate to direct the trial Court to hold proceedings for the disposal of Special Case No. 7 of 2007 on a weekly basis.

…….CJI.
(P. Sathasivam)

…….J.
(Jagdish Singh Khehar)

New Delhi;
September 17, 2013.