Sanction To Prosecute A Public Servant Under Anti-Corruption Laws

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A Constitution Bench of the Supreme Court of India in a landmark judgement delivered in the J.M.M. bribery case titled *P.V. Narasimha Rao v. State, 1998 Cri. L.J. 2930 : AIR 1998 SC 2120* ruled that Members of Parliament are Public Servants and are liable to prosecution under the Prevention of Corruption Act, 1988 and until the Prevention of Corruption Act, 1988 is suitably amended to name the competent authority to accord sanction for prosecution, the prosecuting agency shall obtain the permission from the Presiding officer of the Legislative body concerned for launching prosecution.

> 'Sanction for prosecution' means 'permission to prosecute'. This is an important matter and it constitutes a condition precedent to the institution of the prosecution. This evolution of the law relating to sanction for prosecution in brief is as follows:

Section 190 of the Code of Criminal Procedure confers a general power on Criminal Courts to take cognizance of offences, but the provisions of Sections 195-199 of the Code prohibit the exercise of such powers unless the conditions mentioned therein are complied with. According to Section 197(1) of Cri. P.C., no court shall take cognizance of any offence alleged to have been committed by a person who is or was a Judge or Magistrate or a public servant who was not removable from his office save by or with the sanction of a State Government or Central Government while acting or purporting to act in the discharge of his official duties except with the sanction of the appropriate Government (Section 21 of the Penal Code defines the term 'public servant'.

The object of this provision has been to ensure that public servants act fearlessly by protecting them from false, frivolous and vexatious prosecution. Where a public servant is prosecuted for an offence, which challenges his honesty and integrity, the issue in such case is not only between prosecutor and the offender, but the State is also vitally concerned in it as it affects the morale of the public services and also the administrative interests of the State. For these reasons, the discretion to prosecute was taken away from the prosecuting agency and was vested in the departmental authorities for, they could assess and weigh the accusation in a for more dispassionate

and responsible manner. The purpose of sanction is to secure a well-considered opinion of a superior authority before the public servant is actually prosecuted before a Court. Thus a public servant cannot be prosecuted for the offences of bribery and corruption under Sections 161, 164 & 165 of the Penal Code except with the previous sanction of the appropriate authority/government.

A sanction to prosecute a particular person for an offence implies full knowledge of facts upon which it is sought to prosecute a public servant and a deliberate decision of the sanctioning authority that he may be prosecuted. No specific type, form or particular words have been prescribed for a sanction order. Therefore, in accordance with the common sense and requirements of justice, all that the order of sanction must show is that all the relevant materials were placed before the sanctioning authority and the authority considered those materials and the order sanctioning prosecution resulted there from. The sanction order need not set out the full facts or reasons why sanction was accorded, (1963 (1) Cri. L.J. 675). The Act does not set the time limit within which the sanction or refusal to prosecute has to be accorded. An order refusing the sanction need not be a reasoned order.

The law does not lay down what the minimum facts, which should be brought to the notice of the sanctioning authority, are. The satisfaction of the sanctioning authority is entirely subjective. He is the Judge of the material that should be placed before him for enabling him to accord sanction. If the facts placed before him are not sufficient to enable him to exercise his discretion properly, he will ask for more particulars, but it is for him and him alone to determine this matter. The courts are concerned only with one matter and that is to find whether the proper authority in fact accorded sanction for the particular prosecution. If the record shows that sanction was in fact accorded in the same manner as indicated above, the requirements of law are fully satisfied (1953 Cri. L.J. 192).

It should be clear from the form of sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution and, therefore, unless the matter can be proved by other evidence, in the sanction itself, the facts should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case. (1958 Cri. L.J. 265 (SC). The burden of proving that the requisite sanction has been obtained rests on the prosecution and such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the prosecution was based. It is not necessary to give show cause notice to the accused before giving a sanction to his prosecution.

The prevention of Corruption Act, 1988 (Central) was enacted to consolidate and amend the law relating to the prevention of corruption and for related matters. The offences relating to corruption among public servants are contained in Sections 7 to 15 of the Act and Section 19 of the Act requires previous sanction for prosecuting a public servant for the above offences. Section 19 corresponds to Section 6 of the Prevention of Corruption Act, 1947. Sub-sections (3) and (4) have been newly added. Sub-section (3) introduced a new provision that a findings, sentence or other order passed by a special Judge shall not be altered by a Court in appeal, Confirmation or revision on the ground of absence of sanction or on the ground of error, omission or irregularity in the sanction, unless in the opinion of that Court a failure of justice has been in fact occasioned. Error includes competency of authority to grant sanction.

In J&K State we have our own Act, i.e. Prevention of Corruption Act, Svt. 2006. Section 5 of the Act defines 'Misconduct' by public servant and sub-sections (2) and (3) of Section 5 provide punishment for the misconduct. Section 6 requires previous sanction for prosecution of public servant. Similarly Sections 161 to 165 of the Ranbir Penal Code have also been made punishable for imprisonment provided in the Act. The newly incorporated provisions in the Central Act have not so far been adopted by the State.

The Supreme Court in *M. Karunanidhi v. Union of India, AIR 1979 SC 598* held that the Chief Minister and the Ministers are public servants as they hold public office and get salary from the Government funds for the public duty performed by them. In *R.S. Nayak v. A.R. Antulay, AIR 1984 SC 684* it was held that an MLA, is not a public servant with in the meaning of Section 21 of the Penal Code. But subsequent to the enactment of Prevention of Corruption Act, 1988, an MP, or an MLA can be considered as a public servant for the purpose of said Act. An M.P. is elected by the people or nominated by the President. Article 99 of the Constitution requires every member of either House of Parliament, before taking his seat to make and subscribe before the President or some other person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the third schedule. The duty of the elected representative is to participate in the meetings of the house and vote on matters upon which voting is required. Thus, it is his duty to protect the interests of the class of public or community, which he represents. The question whether an MP is a public servant, came up in the J.M.M bribery case and the Constitution Bench, decided that an MP is a public servant. Regarding the authority competent to sanction prosecution under sanction 19, the SC held that the court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction, but till the provision is made by Parliament, the

permission can be obtained from the Chairman of Rajya Sabha or Speaker of the Lok Sabha as the case may be.

This question again came up before Supreme Court of India in an appeal titled *P.V. Narsima Rao v. State (CBI), 1998 Cri. L.J. SC 2930*. The Court held that a member of Parliament has to be treated as a Public servant for the purposes of the Act even though there is no authority who can grant sanction for his prosecution. The protection provided under Art. 105(2) of the Constitution is to enable members to speak their mind in Parliament and vote in the same way, freed of the fear of being made answerable on that account in a court of law. It is for this reason that a member is not liable to any proceedings in any court in respect of any thing said or any vote given by him. Art. 105(2) does not say, that a member is not liable for what he has said or how he has voted.

Therefore the bribe takers MPs who have voted in Parliament against no-confidence motion are entitled to protection of Art. 105(2) and are not answerable, but this protection is not available to the bribe giver MPs and they can be proceeded agains. The officials of the Kendriya Vidalaya have also been covered under the definition of 'Public servant'. The Supreme Court in ***Kendriya Vidyalaya Sanghthan v. Subhas Sharma & Ors. 2003 (2) JKJ 260 [SC]*** held that since the institution is being fully financed by the Central Government, it cannot be said that the employee of the institution are not public servants.

In order to ensure impartial and speedy grant of sanction, it is suggested that sanction 19 of the Prevention of Corruption Act, 1988 and J&K Prevention of Corruption Act, Svt. 2006 may be suitably amended as advised by the Supreme Court of India empowering the President/Governor, as the case may be, to accord sanction for prosecuting a member of Parliament and State Legislature. The President/Governor may however be assisted by a committee consisting of members of the house. The section itself may also specify the form of sanction and the time limit for according sanction. The section may also specify that reasons for granting or refusing sanction have to be recorded by the sanctioning authority, which would ensure greater transparency and accountability.

In view of the rampant growth of corruption in public life, the Parliament in the center and the Legislative assembly in the State, at the earliest has to take steps to amend the Prevention of Corruption Laws suitably to fill in gaps and make the provisions more effective.