

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1766 of 2023

Arising Out of PS. Case No.-8 Year-2022 Thana- C.B.I CASE District- Patna

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Rupesh Kumar, S/O- Late Bipin Kumar, R/o- at Sunaina Niveshnam Setu
Nagar New Bypass Road, Anishabad Ps- Beur Dist- Patna

... ... Petitioner/s

Versus

1. The Union of India, Ministry of Railways represented through the Under Secretary, Railway Board New Delhi
2. The Under Secretary, Ministry of Railways, Railways Board, New Delhi, representing the Competent Authority to grant sanction under Prevention of Corruption Act 1988
3. The Central Bureau of Investigation, Office of the Head of Branch, Anti Corruption Branch Bailey Road Patna, Represented through the DIG of Police and Head of Branch, CBI
4. The DIG Police and Head of Branch, CBI Anti Corruption Branch Patna Bihar
5. The Additional Superintendent of Police, CBI Anti Corruption Branch, Patna Bihar
6. The Investigating Officer cum the Deputy Superintendent of Police, CBI Anti Corruption Branch Patna Bihar

... ... Respondent/s

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Acts/Sections/Rules:

- *Sections 7, 8, 13(1)(d), 17A, 19 of the Prevention of Corruption Act, 1988*
- *Section 120 B of the Indian Penal Code*

Cases referred:

- *Yogesh Nayyar & Anr. v. State of M.P. & Anr., reported in 2023 SCC Online MP 2049*
- *Himanshu Yadav v. State of Rajasthan & Ors., reported in 2022 SCC OnLine Raj 1303*
- *Yashwant Sinha v. CBI, reported in (2020) 2 SCC 338*

- *Nara Chandrababu Naidu v. State of Andhra Pradesh & Anr.*, reported in 2024 SCC OnLine SC 47
- *Vineeta Sharma v. Rakesh Sharma & Ors.*, reported in (2020) 9 SCC 1
- *Darshan Singh v. Ram Pal Singh*, reported in 1992 Supp (1) SCC 191
- *Neeraj Dutta v. State (Government of NCT of Delhi)*, reported in (2023) 4 SCC 731
- *Kim Wansoo v. State of Uttar Pradesh & Ors.*, reported in 2025 SCC OnLine SC 17
- *State of Haryana v. Bhajan Lal*, reported in 1992 Supp (1) SCC 335
- *Mithilesh Kumar Singh v. State of Bihar*, reported in 1998 (2) BLJR 866
- *Dinesh Kumar v. Chairman Airport Authority*, reported in (2012) 1 SCC 532
- *Prakash Singh Badal v. Union of India*, reported in 1987 SCC OnLine P & H 399
- *Central Bureau of Investigation v. Santosh Karnani*, reported in (2023) 3 SCR 476

Writ petition - filed to quash the FIR instituted by CBI against the petitioner for alleged kickbacks in government contracts.

Held - Section 17A bars any enquiry or inquiry or investigation by a police officer into any offence alleged to have been committed by a public servant where the alleged offence is relatable to discharge of his official function or duties, without previous approval of the Central Government or the State or the authority who is competent to remove him. - Discharge of official function means performance of official duty lawfully, honestly and without giving any undue advantage to anybody. If a person gives undue advantage intentionally to another in discharging official duties in lieu of or in exchange of illegal gratification, the said function is not in discharge of official function and

duty. Section 17A was incorporated by way of amendment in 2018 only to save the persons discharging public duties from harassment by the Investigating Agency. If the plea under Section 17A is available to a person discharging public function or duties in a tainted manner, then purpose of Section 17A would be frustrated and in all cases, the accused persons giving some undue advantage against illegal gratification will take shelter under 17A of the Act. This cannot be the object of Section 17A. (Para 32)

In the instant case, the CBI during investigation was able to collect evidence against the accused persons, including the petitioner to the effect that the petitioners were indulged in using their office for illegal purpose in corrupt manner to give undue advantage to some persons in the matter of booking railway rakes. If the role of the accused persons including the petitioner is viewed in the manner, this Court wants to take, there cannot be any requirement for prior sanction under Section 17A of the Prevention of Corruption Act, 1988. (Para 33)

Absence of order of sanction under Section 17A can only be looked into at the time of trial because it is for the accused/petitioner to prove on the principle of probability that he had discharged his official duties diligently, honestly and without any fear or favour and in such circumstances investigation in the absence of Section 17A is bad in law. (Para 34)

Writ Petition is dismissed, on contest. (Para 36)

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- 5. The Additional Superintendent of Police, CBI Anti Corruption Branch, Patna Bihar
- 6. The Investigating Officer cum the Deputy Superintendent of Police, CBI Anti Corruption Branch Patna Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashish Giri, Sr. Advocate
Mr. Sumit Kumar Jha, Advocate
Ms. Riya Giri, Advocate
For the CBI : Mr. Avanish Kumar Singh, SPP, CBI
Mr. Ambar Narayan, Advocate
Mrs. Barkha, Advocate
Mr. Mukul Kumar Singh, Advocate
For the Union of India : Mr. Awadesh Kumar Pandey, Sr. CGC
Mr. Lokesh, Advocate
Mr. Abhishek Kumar Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT
Date : 25-02-2025

1. The Petitioner is an officer of East Central
Railway. On the allegation that the petitioner along with other
officers and members and staffs of East Central Railway have



illegal nexus with one Nawal Kishor Ladha, Director of Ms. Abha Agro Industries Private Limited having its office at Om Tower, 32 Jawahar Lal Nehru Road, 12th Floor, Kolkata – 700071 and the petitioner in collusion and conspiracy with said company and other officers and members of staff of East Central Railway used to give undue advantage to the said company by reservation of out of turn railway rakes accepting illegal gratification. The said information was received by the CBI officers, Patna. It was alleged that the said Nawal Kishore Ladha as and when required pursued his emergent requirement of railway rakes and other allied issues to the petitioner along with one Sanjay Kumar, Rupesh Kumar (petitioner), Sachin Mishra and others being officers and employees of East Central Railways and in lieu of making railway rakes available under emergent circumstances, the petitioner had received Rs. 4 lakhs on 24th of May, 2022 and Rs. 6 lakhs on 27th of June, 2022. The CBI got the information that on 16th of July, 2022, Nawal Kishore Ladha instructed his brother Manoj Ladha to send Rs. 10 lakhs to be paid to different persons as illegal gratification at Patna, Samastipur and Hajipur. On 30th of July, 2022, Nawal Kishore Ladha again directed Manoj Ladha and Bajrang Ladha to send Rs. 23.5 lakhs to Patna, Sonapur and Samastipur in



different envelopes, each containing Rs. 6 lakhs, Rs. 6 lakhs, Rs. 5 lakhs, Rs. 3 lakhs, Rs. 2.75 lakhs, Rs. 50,000/- and Rs. 25,000/- to be delivered to different officers of East Central Railway. Manoj Ladha told his driver Manoj Saha to go to Patna with the aforesaid money, contained in different envelopes in a packet to deliver the same to different persons including Rupesh Kumar (petitioner).

2. In order to work out the said information, the CBI constituted a trap team, comprising of the officers of CBI and two independent witnesses namely, Afsar Aquil and Jai Shankar Prasad Singh. After pre-trap brief, the trap team conducted vigil on Patliputra Rail Parisar, Digha, Patna from 10 a.m. on 31st of July, 2022. At about 12.30 pm., one XUV500 car, bearing Registration No. WB60S0222 reached Patliputra Rail Parisar. The driver got down from the car with a gray coloured bag and entered into the premises of Patliputra Rail Parisar, Digha Patna. The trap team was awaiting outside and as soon as Manoj Kumar Saha came out of the premises, he was apprehended outside the gate. On being asked, he disclosed that he delivered bribe money of Rs. 6 lakhs in a yellow bag to Sanjay Kumar CFTM at his residential premises located at Flat No. 502 B, 5th Floor, B Block Patliputra Railway Parisar, Digha Patna. The trap



team immediately went to the residence of Sanjay Kumar and apprehended him on the charge of accepting Rs. 6 lakhs as bribe. The said Sanjay Kumar admitted acceptance of money and handed over the said yellow bag to the CBI officer Incharge of trap. He was arrested and the money was seized under proper seizure list at the spot. A case was instituted against Sanjay Kumar under Section 7 read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and CBI submitted charge-sheet against him on 29th of September, 2022 while keeping further investigation open. Subsequently thereto, a supplementary charge-sheet was filed on 30th of May, 2023. The CBI also obtained sanction for prosecution *vide* order, dated 12th of July, 2023 and it was submitted before the trial court. In the charge-sheet, it is also stated that after apprehending Sanjay Kumar, the gray coloured bag of Manoj Kumar Saha was searched and six numbers of bags containing money was recovered along with certain letters and correspondences. On the basis of the statement made by Manoj Kumar Saha, the Driver of the aforesaid XUV vehicle, the petitioner was arrested on 1st of August, 2022.

3. With regard to want of proper sanction, a supplementary affidavit has been filed on behalf of the



petitioner on 31st of January, 2024, challenging the veracity of the charge-sheet and the order of cognizance as a result of non-compliance of Section 17-A of the Prevention of Corruption Act, 1988.

4. It is urged on behalf of the petitioner that the CBI having no previous approval of the Central Government as mandatorily required under the said provision, the sanction order under Section 19 was not issued in accordance with law and no offence is made out against the petitioner.

5. In support of his contention, the learned Sr. Advocate for the petitioner has filed a standard operating procedure, dated 3rd of September, 2021 for processing of cases under Section 17 A of the Prevention of Corruption Act, 1988.

6. The Respondents have filed counter affidavit as well as supplementary counter affidavit. It is stated on behalf of the respondents that the petitioner was apprehended on the basis of information obtained from one Manoj Kumar Saha, who used to carry bribe money from one Manoj Kumar Ladha and also a milkman who used to act as a carrier of the bribe money received by Rupesh Kumar (petitioner). On the plea of the accused as to seeking previous approval from the department concerned under Section 17A of the P.C. Act, 1988 for initiating



investigation against the accused, it was submitted by the CBI that the 1st proviso of Section 17A of the Prevention of Corruption Act, 1988 as amended in the year 2018, says as under: - “provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other persons.”

7. Mr. Ashish Giri, learned Sr. Advocate appearing on behalf of the petitioner refers to the F.I.R. filed by CBI in the instant case, on 30th of July, 2022, on the basis of which, Case No. RC 8 (A)/2022 was registered under Section 120 B of the Indian Penal Code read with Sections 7 and 8 of Prevention of Corruption Act, 1988 and submits that the petitioner was not arrested by the trap team. He used to stay at Samastipur. There is no evidence that Manoj Kumar Saha, alleged career of bribe money went to Samastipur to make payment of illegal gratification. Secondly, no recovery was made from the petitioner. The said Manoj Kumar Saha did not tell the name of the petitioner as one of the accused in the offence of taking illegal gratification. Therefore, the allegation made in the F.I.R. has not been substantiated by evidence collected by the Investigation Officer during investigation.



8. At this junction, relevant portions of the F.I.R. is required to be quoted hereinbelow: -

“22. Investigation further disclosed that the mobile numbers of accused persons were intercepted during relevant period after getting prior permission of the competent authority. The recorded telephonic conversations of accused persons are collected during investigation which also corroborates the facts of the case.

24. Investigation into the above mentioned recorded phone calls disclosed that accused Sanjay Kumar, CFTM had obtained bribe amount of Rs. 10 lakhs each on 24.05.2022 and 20.06.2022, from accused Nawal Kishor Ladha and Manoj Kumar Ladha which were delivered through their driver, Manoj Kumar Saha. Other accused Rupesh Kumar had also obtained bribe, amounting to Rs. 4 lakhs on 24.05.2022 and another Rs. 6 lakhs on 27.06.2022 from accused Nawal Kishor Ladha and Manoj Kumar Dadha, which were delivered through their driver Manoj Kumar Saha. Similarly, accused Sanchin Kumar Mishra had also obtained bribe amounting to Rs. 6 lakhs on 24.05.2022 and another Rs. 3.5 lakhs on 11.06.2022 from accused Nawal Kisho Ladha and Manoj Kumar Ladha which were delivered through their



driver Manoj Kumar Saha.....

29. During investigation, sample voices of Sanjay Kumar, Rupesh Kumar, Sachin Kumar Mishra, Nawal Kishor Ladha and Manoj Kumar Saha have been collected. The voice sample of one Shri Sanjay Kumar S/o Ayodhya Rai of Samastipur, milkman, who found to be engaged in collection of packets containing bribe amount from Manoj Kumar Saha on behalf of accused Rupesh Kumar, was also collected. All the sample voices so collected have been sent to CFSL along with DVD containing 54 nos. of voice files in respect of recordings of telephonic conversation held amongst the accused persons for voice spectrograph examination and opinion. The report is awaited.

30. Investigation revealed that Shri Sanjay Kumar S/o Late Ayodhya Rai, milkman used to supply milk and other essential items to the house of Rupesh Kumar and on being asked by Rupesh Kumar, he had collected packets (containing bribe amount in the form of cash) from accused Manoj Kumar Saha on several occasions. The statement of said Shri Sanjay Kumar S/o Late Ayodhya Rai, milkman was got recorded under Section 164 Cr.P.C. in which he has accepted to have collected bribe amount on behalf of Rupesh Kumar from Manoj Kumar Saha at multiple occasions.”



9. The learned Sr. Advocate on behalf of the petitioner next refers to paragraph 11 of the supplementary charge-sheet, which states as under: -

“Investigation also revealed that Manoj Ladha of M/s Abha Agro Exports Private Limited, Dalkhola has booked one premium indents for 24.06.2022. It is further revealed that as per page 50 of Stacking Register of Badla Ghat of Samastipur division, on 23.06.2022 at about 07.30 Hrs., the stacking for 48 Hrs. was given on normal indent to Niket Ladha of M/s Gopal Trading Company, Dalkola as per order of Sh. Rupesh Kumar the then Sr. DOM Samastipur conveyed by Controller Goods. The order of Sh. Rupesh Kumar, the then Sr. DOM, Samastipur is mentioned in the handwriting of Sh. Mahesh Kumar Bharti, the then Operating Controller, Samastipur in the Control Order Book. The stacking and loading by Niket Ladha of M/s Gopal Trading Company, Dalkola was completed on 26.06.2022, which caused the lapse of premium indent booked for 24.06.2022 by Sh. Manoj Ladha of M/s Abha Agro Export Private Limited. Thus, the order dated 23.06.2022 of Sh. Rupesh Kumar, the then Sr. DOM, Samastipur caused the lapse of premium indent booked by Manoj Ladha and also caused loss to the Railways. The concerned



documents viz. Stacking Registers, Control Order books have been seized and relevant witnesses have been examined during investigation, which have proved these facts.”

10. Mr. Giri, learned Sr. Advocate for the petitioner next refers to the sanction order issued by under Secretary – III/DAR, Railway Board on 12th of July, 2023.

11. It is submitted by Mr. Giri that Section 17-A of the Prevention of Corruption Act, 1988 as amended in 2018, clearly states that no Police Officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval -

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government; and

(c) in the case of any other person, of



the authority competent to remove him from his office, at the time when the offence was alleged to have been committed.

12. It is contended on behalf of the petitioner that the allegation against the petitioner is that he allotted railway rakes in illegal manner to Ms. Abha Agro Industries Private Limited in discharge of his official duty. Thus, it is the official duty of Rupesh Kumar (petitioner) to allot rakes to the transporters of various goods by railway rakes/wagons. Thus, while discharging the official function, the petitioner allegedly took gratification by giving favour to the Directors of Ms. Abha Agro Industries Private Limited. Therefore, the entire investigation of CBI without the order of sanctions under Section 17 A is illegal and on this ground alone, the criminal case against the petitioner is required to be quashed.

13. In support of his contention, Mr. Giri first refers to a Division Bench decision of Madhya Pradesh High Court in the case of ***Yogesh Nayyar & Anr. v. State of M.P. & Anr.***, reported in ***2023 SCC Online MP 2049***. It is held by the Division Bench of the Madhya Pradesh High Court that a bare perusal of Section 17 A reveals that prior to insertion of the said provision in P. C. Act, the only provision giving protection of prior sanction to prosecution was Section 19 which is applicable at



the stage of taking cognizance of offence, but not from any prior date. On 26.07.2018, the Prevention of Corruption Act, 1988 (Amended Act, 2018) underwent wide spread amendments including the insertion of Section 17-A which gave an added umbrella of protection to the public servant at the stage of enquiry/inquiry/investigation. The police officer was prohibited from conducting enquiry/inquiry/investigation into any offence alleged under the PC Act when allegations related to recommendation made or decision taken are as follows :-

5.1 In the instant case, learned counsel for prosecution does not dispute that the allegations relate to decision taken or/and recommendation made by petitioners in their capacity as Assistant Engineer and Sub-Engineer. Thus, by the very nature of allegation, the bar contained in Section 17-A gets attracted.

5.2 The prohibition for a police officer is to conduct inquiry or investigation. An investigation is conducted only after an FIR is lodged and since in the instant case, the FIR was lodged on 10.12.2018 which was after Section 17-A of Prevention of Corruption Act, 1988 (Amended Act, 2018) came on the statute book w.e.f. 26.07.2018, police was prohibited from conducting investigation pursuant to the impugned FIR, in the absence of any previous



approval of authority competent to remove the petitioners from office at the time when offence was alleged to have been committed.

5.3 Learned counsel for prosecution however, submits that Section 17-A does not prohibit registration of offence/lodging of FIR but only investigation enquiry/inquiry.

6. Learned counsel for the Prosecuting Agency may be correct in his submission that lodging of an FIR in absence of approval is not expressly barred by Section 17-A of PC Act. However, what has been prohibited is conduction of investigation by a Police Officer and since lodging of an FIR is the triggering point of investigation, it is obvious that even if an FIR is lodged, investigation cannot take place without approval of competent authority.

7. In the instant case, after registration of impugned FIR, the investigation is being conducted but no charge-sheet has been filed yet and it is not disputed by learned counsel for prosecution that no prior approval of competent authority has been taken before initiating and conducting investigation.

8. Therefore, the investigation conducted pursuant to impugned FIR stands vitiated on the anvil of Section 17-A of PC Act.

9. Accordingly, the petition stands allowed to the following extent:



1. *The investigation conducted subsequent to filing of FIR stands vitiated and is set aside.*

2. *Liberty, however, is extended to Prosecuting Agency to obtain prior approval or conducting investigation from the competent authority in terms of Section 17-A of PC Act.*

3. *It is made clear that this Court has left the FIR bearing Crime No. 37/2018 at Police Station E.O.W. Bhopal intact.*

14. The learned Sr. Advocate appearing on behalf of the petitioner also refers to a Co-ordinate Bench decision in the case of ***Himanshu Yadav v. State of Rajasthan & Ors.***, reported in ***2022 SCC OnLine Raj 1303***. In this case also the Rajasthan High Court deliberated on the scope of Section 17 A of the Prevention of Corruption Act, 1988. The Court placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Yashwant Sinha v. CBI***, reported in ***(2020) 2 SCC 338*** to hold that Section 17A of the Act of 1988 is *sine qua non* in terms of paragraph 117 of Yashwant Sinha's judgement delivered by the Hon'ble Supreme Court. The Hon'ble Supreme Court in Paragraph 117 of the aforesaid judgement held as hereunder:-

“117. In terms of Section 17A, no Police Officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the



offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, inter alia, of the authority competent to remove the public servant from his Office at the time when the offence was alleged to have been committed. In respect of the public servant, who is involved in this case, it is clause (c), which is applicable. Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation. It is in this context apposite to notice that the complaint, which has been filed by the petitioners in Writ Petition (Criminal) No. 298 of 2018, moved before the first respondent-CBI, is done after Section 17A was inserted. The complaint is dated 04.10.2018. Paragraph 5 sets out the relief which is sought in the complaint which is to register an FIR under various provisions. Paragraphs 6 and 7 of the complaint are relevant in the context of Section 17A, which reads as follows:

“6. We are also aware that recently, Section 17(A) of the act has been brought in by way of an amendment to introduce the requirement of prior permission of the government for investigation or inquiry under the Prevention of Corruption Act.

7. We are also aware that this will



place you in the peculiar situation, of having to ask the accused himself, for permission to investigate a case against him. We realise that your hands are tied in this matter, but we request you to at least take the first step, of seeking permission of the government under Section 17A of the Prevention of Corruption Act for investigating this offence and under which, “the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month”.”

15. It is also submitted by Mr. Giri, learned Sr. Advocate for the petitioner that indisputably the allegation of demand of illegal gratification relates to the discharge of official duties of the petitioner and no prior approval of the competent authority has been obtained, as such the proceedings or the very attempt to arrest the petitioner on spot on the charge of accepting bribe (which was filed) may or may not be illegal but the proceedings thereafter, further investigation and lodging of F.I.R. against the petitioner without an approval of the competent authority is void *ab initio*.

16. Thus, it is urged by the learned Sr. Advocate appearing on behalf of the petitioner that the commencement of



investigation itself is found to be suffering from inherent lacunae in the absence of prior approval of sanction.

17. The learned Sr. Advocate appearing on behalf of the petitioner next refers to the decision of Hon'ble Supreme Court in the case of *Nara Chandrababu Naidu v. State of Andhra Pradesh & Anr.*, reported in **2024 SCC OnLine SC 47**.

18. Referring to the said decision, it is submitted by Mr. Giri that the object of inserting Section 17 A of the P.C. Act, which is in *pari materia* with the provisions contained in Section 6A of the Delhi Special Police Establishment Act, 1946, is to protect the honest public servants from the harassment by way of inquiry or investigation in respect of the decisions taken or acts done in *bona fide* performance of their official functions or duties. Whereas Section 19 bars the courts from taking the cognizance of an offence punishable under the PC Act, alleged to have been committed by public servants except with the prior sanction of the concerned authorities mentioned therein, Section 17A bars the police officer from conducting any enquiry or inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties, without the previous approval of the concerned authorities mentioned therein.



19. It is submitted by Mr. Giri, learned Sr. Advocate appearing on behalf of the petitioner that since Section 17A constitutes a legal bar to the very initiation of an enquiry, inquiry or investigation into the offence alleged to have been committed by Public Servant without the previous approval of the functionaries specified in the provision, such a provision is procedural in nature and, therefore, the mandate of Section 17A should be made retrospectively applicable, i.e., even to the pending enquiry, inquiry or investigation, if not made applicable retrospectively, also cannot be accepted. The cardinal principle of construction is that every Statute would have prospective operation unless it is expressly or by necessary implication made to have retrospective operation. There could not be a presumption against retrospectivity. In the instant case, the amendment came in the year 2018 by which Section 17A was inserted, shall specifically made applicable w.e.f. 26.07.2018 by the Central Government *vide* notification of the Act. Hence, the intention of the legislature was also to make the amendment applicable prospectively from a particular date and not retrospectively or retroactively.

20. In *Vineeta Sharma v. Rakesh Sharma & Ors.*, reported in (2020) 9 SCC 1, a three Judges Bench have



distinguished the effect of retrospective Statute, retroactive Statute and prospective Statute and has observed as under: -

“61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act.”

21. The concept of retrospective and retroactive Statute has been stated by Hon'ble Supreme Court in the case of ***Darshan Singh v. Ram Pal Singh***, reported in ***1992 Supp (1) SCC 191***. Paragraphs 35 to 37 of the aforesaid judgement are relevant and quoted below: -

“35. Mr Sachar relies on Thakur Gokulchand v. Parvin Kumari [(1952) 1 SCC 713 : AIR 1952 SC 231 : 1952 SCR 825] , Garikapatti Veeraya v. N. Subbiah Choudhury



[1957 SCR 488 : AIR 1957 SC 540] , Jose Da Costa v. Bascora Sadasiva Sinai Narcornim [(1976) 2 SCC 917] , Govind Das v. ITO [(1976) 1 SCC 906 : 1976 SCC (Tax) 133] , Henshall v. Porter [(1923) 2 KBD : 193 : 39 TLR 409] , United Provinces v. Mst. Atiga Begum [1940 FCR 110 : AIR 1941 FC 16] , in support of his submission that the Amendment Act was not made retrospective by the legislature either expressly or by necessary implication as the Act itself expressly provided that it shall be deemed to have come into force on January 23, 1973; and therefore there would be no justification to giving it retrospective operation. The vested right to contest which was created on the alienation having taken place and which had been litigated in the court, argues Mr Sachar, could not be taken away. In other words, the vested right to contest in appeal was not affected by the Amendment Act. However, to appreciate this argument we have to analyse and distinguish between the two rights involved, namely, the right to contest and the right to appeal against lower court's decision. Of these two rights, while the right to contest is a customary right, the right to appeal is always a creature of statute. The change of the forum for appeal by enactment may not affect the right of appeal itself. In the instant case we are



concerned with the right to contest and not with the right to appeal as such. There is also no dispute as to the propositions of law regarding vested rights being not taken away by an enactment which is ex facie or by implication not retrospective. But merely because an Act envisages a past act or event in the sweep of its operation, it may not necessarily be said to be retrospective. Retrospective, according to Black's Law Dictionary, means looking backward; contemplating what is past; having reference to a statute or things existing before the Act in question. Retrospective law, according to the same dictionary, means a law which looks backward or contemplates the past; one which is made to affect acts or facts occurring, or rights occurring, before it came into force. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. Retroactive statute means a statute which creates a new obligation on transactions or considerations already past or destroys or impairs vested rights.

36. *In Halsbury's Laws of England (4th edn., Vol. 44, at paragraph 921) we find:*



“921. Meaning of ‘retrospective’.— It has been said that ‘retrospective’ is somewhat ambiguous and that a good deal of confusion has been caused by the fact that it is used in more senses than one. In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus a statute is not retrospective merely because it affects existing rights; or is it retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its passing.”

37. We are inclined to take the view that in the instant case legislature looked back to January 23, 1973 and not beyond to put an end to the custom and merely because on that cut off date some contests were brought to abrupt end would not make the Amendment Act retrospective. In other words, it would not be retrospective merely because a part of the requisites for its action was drawn from a time antecedent to the Amendment Act coming into force. We are also of the view that while providing that “no person shall contest any alienation of immovable property whether ancestral or non-ancestral or any appointment



of an heir to such property”, without preserving any right to contest such alienations or appointments as were made after the coming into force of the Principal Act and before the coming into force of the Amendment Act, the intention of the legislature was to cut off even the vested right; and that it was so by implication as well. There is no dispute as to the proposition that retrospective effect is not to be given to an Act unless, the legislature made it so by express words or necessary implication. But in the instant case it appears that this was the intention of the legislature. Similarly, Courts will construe a provision as conferring power to act retroactively when clear words are used. We find both the intention and language of the Amendment Act clear in these respects.”

22. It is also submitted by Mr. Giri, learned Sr. Advocate, referring to the decision of ***Neeraj Dutta v. State (Government of NCT of Delhi)***, reported in ***(2023) 4 SCC 731*** that in order to prove a charge under Section 7 of the Prevention of Corruption Act, 1988, demand of illegal gratification is the *sine qua non* where there is no evidence collected by the Investigating Officer that the petitioner ever demanded any bribe and on the basis of the statement of a co-accused, he cannot be implicated in a criminal case.



23. Mr. Giri also submits referring to the decision of ***Kim Wansoo v. State of Uttar Pradesh & Ors.***, reported in **2025 SCC OnLine SC 17** that in order to come to a decision as to whether the charge-sheet is liable to be quashed under Article 226 of the Constitution of India in exercise of the extraordinary power of the High Court, the principle laid down in ***State of Haryana v. Bhajan Lal***, reported in **1992 Supp (1) SCC 335** may also be relied upon. Paragraph 102 (6) of Bhajan Lal (supra) says where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party, the criminal case can be quashed.

24. Mr. Avanish Kumar Singh, learned SPP, CBI, on the other hand, submits that the learned Sr. Advocate for the petitioner has formulated his argument mainly on the basis of the validity of sanction order and absence of sanction order under Section 17A of the Prevention of Corruption Act, 1988.

25. Against such submission, it is argued by the learned Special PP that in ***Mithilesh Kumar Singh v. State of***



Bihar, reported in **1998 (2) BLJR 866**, it is held by this Court that the validity of sanction can only be decided on the basis of material to be placed at the stage of evidence during trial. At the initial stage of cognizance, the learned Special Judge considered and found sanction order in record at the time of filing of the charge-sheet. Whether the said sanction order is valid or not can only be looked into at the time of trial.

26. Referring to another decision of Hon'ble Supreme Court in the case of **Dinesh Kumar v. Chairman Airport Authority**, reported in **(2012) 1 SCC 532**, it is submitted by the learned Special PP on behalf of the CBI that while drawing a distinction between the absence of sanction and invalidity of sanction, Hon'ble Supreme Court in **Prakash Singh Badal v. Union of India**, reported in **1987 SCC OnLine P & H 399**, expressed in no uncertain terms that the absence of sanction could be raised at the inception and threshold by an aggrieved person. However, where sanction order exists, but its legality and validity is put in question, such issue has to be raised in course of trial.

27. The learned Advocate on behalf of CBI also submits that even otherwise, absence of approval to be conducting any enquiry or inquiry or investigation into an



offence alleged to have been committed by a public servant as contemplated in Section 17 A could never be the ground for quashing the F.I.R. registered against the public servant or the proceeding conducted against him, more particularly when he is also charged for other offences under the Indian Penal Code in respect of the same set of allegations. As stated earlier, there are other facets contained in Section 17 A, like whether the alleged offence is relatable to the recommendation made or decision taken by the public servant or not, and whether such recommendation or decision was made or taken in discharge of his official functions or duties or not etc. Such facets could be examined only when the evidence is led during the course of trial. The alleged acts which *prima facie* constitute the offences, though done under the purported exercise of official function or duty, could not fall within the purview of Section 17A. The protection sought to be granted to a public servant under Section 17A could not be extended to his acts which *prima facie* were not in discharge of his official functions or duties. Any other interpretation would certainly tantamount to scuttling the investigation at a very nascent stage. Such could neither be the intention of the legislature nor could such provision be interpreted in the manner which would be counter productive or



frustrating the very object of the Prevention of Corruption Act, 1988.

28. Even otherwise, absence of an approval as contemplated in Section 17 A for conducting enquiry, inquiry or investigation of the offences alleged to have been committed by a public servant in purported exercise of his official functions or duties, would neither vitiate the proceedings nor would be a ground to quash the proceedings of the F.I.R. registered against such public servant.

29. In *Central Bureau of Investigation v. Santosh Karnani*, reported in (2023) 3 SCR 476, it was held by the Hon'ble Supreme Court that the contention that prior approval of investigation, as mandated under Section 17A of the Prevention of Corruption Act, has not been obtained and thus, the proceedings initiated against Respondent No. 1 stand vitiated, has no legal or factual basis. Section 17A merely contemplates that police officers shall not conduct any enquiry, inquiry or investigation into any offence alleged to have been committed by a public servant where the alleged offence is relatable to any recommendation made or decision taken in discharge of official functions or duties, without the previous approval of the competent authority. The first proviso to the



Section states that such approval is not necessary in cases involving arrest of the person on the spot on the charges of accepting undue advantage. In other words, in respect of trap cases, no approval or sanction under Section 17 A is necessary.

30. The learned Advocate appearing on behalf of CBI also submits that the Court under its extraordinary power under Article 226 of the Constitution of India or inherent power under Section 482 of the Cr.P.C. cannot conduct a mini trial in respect of a case under Prevention of Corruption Act, 1988 with regard to validity of sanction under the provision of Section 17A of the said Act. The Court is under obligation to see whether the criminal proceeding was malicious or not and at the time of acceptance of charge-sheet by taking cognizance, the trial court is not in a position to see the defence that may be taken by the accused at the time of trial.

31. I have already narrated the prosecution case. I have also quoted the provision contained in Section 17A of the Prevention of Corruption Act, 1988 and the arguments advanced by the learned Advocates with reference to the decisions relied upon by them.

32. Section 17A bars any enquiry or inquiry or investigation by a police officer into any offence alleged to have



been committed by a public servant where the alleged offence is relatable to discharge of his official function or duties, without previous approval of the Central Government or the State or the authority who is competent to remove him. Therefore, the term “in discharge of official function or duties” is of utmost importance while considering the issue as to whether prior approval under Section 17A is required or not. “Discharge of Function” means to perform or make duties of an office or obligation. For example, one discharges the official function of a railway officer, maintaining railway tracks; others discharge functions of booking of railway wagons and rakes; and another persons discharge some other public duties. So discharge of official function means performance of official duty lawfully, honestly and without giving any undue advantage to anybody. If a person gives undue advantage intentionally to another in discharging official duties in lieu of or in exchange of illegal gratification, the said function is not in discharge of official function and duty. Section 17A was incorporated by way of amendment in 2018 only to save the persons discharging public duties from harassment by the Investigating Agency. If the plea under Section 17A is available to a person discharging public function or duties in a tainted manner, then purpose of Section



17A would be frustrated and in all cases, the accused persons giving some undue advantage against illegal gratification will take shelter under 17A of the Act. This cannot be the object of Section 17A.

33. In the instant case, the CBI during investigation was able to collect evidence against the accused persons, including the petitioner to the effect that the petitioners were indulged in using their office for illegal purpose in corrupt manner to give undue advantage to some persons in the matter of booking railway rakes. If the role of the accused persons including the petitioner is viewed in the manner, this Court wants to take, there cannot be any requirement for prior sanction under Section 17A of the Prevention of Corruption Act, 1988.

34. Want or absence of order of sanction under Section 17A can only be looked into at the time of trial because it is for the accused/petitioner to prove on the principle of probability that he had discharged his official duties diligently, honestly and without any fear or favour and in such circumstances investigation in the absence of Section 17A is bad in law.

35. All other points regarding involvement of the petitioner in the alleged offence are issues of fact which can



only be decided during trial and Writ Court under the above facts and circumstances cannot quash the charge-sheet and the order of cognizance taken by the learned Special Judge, CBI Court at Patna.

36. The Writ Petition is, thus, dismissed, on contest.

37. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/-

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