



*Achieve Perfection by unattached action*

**Report on**

**ONE DAY CONFERENCE ON SPEEDY  
AND QUALITATIVE DISPOSAL OF ACD  
AND CBI CASES**

**Held on 19 January 2020**

**Organised by: Rajasthan State Judicial Academy, Jodhpur**

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*Corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills conscience, paralyses economic growth, corrodes sense of civility and mars marrows of governance. Hence, there is strong need to eradicate it.*

**Niranjan Hemchandra Sashittal v. State of Maharashtra (2013) 4 SCC 642**

- Objective of Rajasthan State Judicial Academy is to educate and sensitize its officers and other stake holders about the latest laws and procedure to achieve the constitutional mandate of securing the “Rule of Law”. Keeping up with the constitutional mandate in mind, the Rajasthan State Judicial Academy is regularly organizing various training programmes, refresher courses, seminars, judicial colloquiums, conferences and workshops for Judicial Officers and other stakeholders.
- In furtherance of the above, a ***One day Conference on Speedy and Qualitative Disposal of ACD and CBI Cases*** was organized on 19 January 2020 in which a total of 16 Judicial Officers, 15 Prosecution Officers and Special Public Prosecutors and 4 Inspectors of CBI Courts and Officers dealing with ACD matters in the State of Rajasthan participated.
- The Conference concluded in 4 (Four) independent sessions:
- **Session-I**  
*Prosecution of Public Servants:*
  - *Offences and Penalties;*
  - *Arrest and Investigation;*
  - *Attachment and Forfeiture;*
  - *Sanction in the perspective of Prosecution*
- **Session-II**  
*Sanction in the perspective of Public Servant, Presumption under the Prevention of Corruption Act vis-à-vis Presumption of innocence and Bird’s eye view of Prevention of Money Laundering Act, 2002*
- **Session-III**  
*Continuance of Disciplinary and Criminal Proceedings simultaneously*
- **Session-IV**  
*Sentencing Practices in Corruption Cases*
- The Resource Persons for the conference were:
  1. Sh. V.K. Singh (I.G. (Rules), Police Headquarters, Jaipur)
  2. Sh. M.D. Upadhyay (Former Dy. Director, Prosecution Department, Bikaner)
  3. Sh. Rajeev Kumar Awasthi (Advocate, High Court of Delhi)
  4. Sh. Renjith Thomas (Assistant Professor, National Law University, Jodhpur)
- The conference was inaugurated at 10:00 A.M. on January 19, 2020 by Sh. Hari Om Sharma Attri (Director, Rajasthan State Judicial Academy), Hon’ble Resource Person Sh. V.K. Singh, (I.G. (Rules), Police Headquarters, Jaipur) and other officers of the Academy by lighting the lamp.
- Welcome address was given by the Director (Rajasthan State Judicial Academy) wherein he briefly introduced the scheme of the conference. Thereafter, he requested the presiding officers of courts dealing with corruption matters to actively play their parts in tackling the menace of corruption. The conference subsequently began with the deliberations by the Hon’ble Resource Persons.

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**Session I by Sh. V.K. Singh (I.G. (Rules), Police Headquarters, Jaipur)**

*Prosecution of Public Servants:*

- *Offences and Penalties;*
- *Arrest and Investigation;*
- *Attachment and Forfeiture;*
- *Sanction in the perspective of Prosecution*
- The Hon’ble Resource Person discussed a comprehensive reading list with the participants which included:
  1. Guidelines of International Anti-Corruption Academy based at Laxenburg, Austria that teaches government, other officials, and professionals about anti-corruption measures.

2. A Book called “*Why Scams are here to Stay: Understanding Political Corruption in India by N. Ram*”.
3. Furthermore the resource person went on to discuss many case laws with regards to prosecution in such cases.
  - In the landmark case of **Yogendra Kumar Jaiswal Etc. v. State of Bihar & Ors. (2016) 2 SCC (Cri) 1**, the Hon’ble Mr. Justice Deepak Mishra stated that “*In a way, corruption becomes a national economic terror. This social calamity warrants a different control and hence, the legislature comes up with special legislation with stringent provisions.*”
  - It was stated by the Hon’ble Resource Person that the presumption clause is the biggest weapon to a prosecutor and there is a requirement of cogent evidence from the accused side to rebut this presumption.
  - In the landmark case of **Madhukar Bhaskarrao Joshi v. State of Maharashtra (2000) 8 SCC 571**, it has been held by the Hon’ble Supreme Court that with regards to presumption of corruption; Proof of payment or receipt of gratification is sufficient to raise legal presumption that gratification was paid or accepted as a motive or reward. There is no further duty to prove beyond fact that demanded money had been paid.
  - Further, in the landmark case of **Kishan Chand Mangal v. State of Rajasthan (1982) 3 SCC 466**, it has been held by the Hon’ble Supreme Court that with regards to presumption of corruption; where the accused says that involuntarily the amount was thrust in his pocket he could not be said to have accepted or obtained for himself any gratification other than legal remuneration which alone permits the presumption to be raised.
  - The Hon’ble Resource person also shared with the participants their own practical experiences of certain “trap cases” and how to handle the same. It was stated that in cases of corruption the complainant should not be the investigator itself.
  - With regards to Section 19(3)(c) of Prevention of Corruption Act, 1988 which provides for prohibition on stay of proceedings on any other ground. It has been clarified by the Hon’ble Supreme Court in the landmark case of **Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. v. CBI (2018) 16 SCC 299**, that the term ‘*Any other ground*’ in Section 19(3)(c), refers to any ground other than ‘sanction’. It was further held that, Section 19(3) (c) PC Act is not a ban on maintainability of a petition u/s 482 CrPC.
  - With regards to validity of a sanction order, the Hon’ble Supreme Court in the landmark case of **Dinesh Kumar v. Chairman, Airport Authority of India and Another (2012) 1 SCC 532** has held that invalidity of sanction where sanction order exists; can be raised on diverse grounds like non-availability of material before sanctioning authority or bias of sanctioning authority or order of sanction having been passed by an authority not authorised or competent to grant such sanction. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial.
  - The Hon’ble Supreme Court in **State of Karnataka v. Ameer Jan (2007) 11 SCC 273** held that, an order of sanction should not be construed in a pedantic manner. Ordinarily, the sanctioning authority is the best person to judge whether sanction is to be granted or refused, application of mind on the part of the sanctioning authority being imperative.
  - In the landmark case of **C.B.I. v. Ashok Kumar Aggarwal (2014) 14 SCC 295**, the Hon’ble Supreme Court held that the prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it.
  - Lastly, in the landmark case of **Dr. Subramanian Swamy v. Dr. Manmohan Singh and another (2012) 3 SCC 64** it has been held by the Hon’ble Supreme Court that any citizen may make representation for sanction of prosecution of a public servant whereupon the competent authority shall act within the time frame in accordance with the directions in **Vineet Narain v. Union of India (1998) 1 SCC 226**. It was also held in **Dr. Subramanian Swamy v. Dr. Manmohan Singh and another (2012) 3 SCC 64** that at the end of the extended period of time limit (three months in this case), if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution (*Concept of deemed sanction*) as the absence of any time limit in granting sanction in Section 19 of the P.C. Act is not in consonance with the requirement of the due process of law.

## **Session II by Sh. Rajeev Kumar Awasthi (Advocate, High Court of Delhi)**

*Sanction in the perspective of Public Servant, Presumption under the Prevention of Corruption Act vis-à-vis Presumption of innocence and Bird's eye view of Prevention of Money Laundering Act, 2002*

- The Hon'ble Resource Person brought to the attention of the participants as to how the Prevention of Corruption Act was envisaged due to the International obligations of the nation. The participants were also made aware of the implications and recommendations of the Financial Action Task Force, an intergovernmental organization founded in 1989 on the initiative of the G7 to develop policies to combat money laundering. In 2001, its mandate expanded to include terrorism financing.
- The scheme of the Prevention of Money-laundering Act, 2002 was then discussed with the participants which envisages two parallel proceedings, namely:
  1. Attachment of property
  2. Prosecution and Punishment
- With regards to money laundering matters, the incidents of Satyam Scam and Vijay Mallya were also discussed with the participants. It was stated by the Hon'ble Resource Person that the Prevention of Money-laundering Act, 2002 was a relatively uncharted territory for the courts and with the rise of economic offences, it would be very handy to know the nitty gritty of this particular legislation.
- In the case of **B. Rama Raju v. Union of India, Ministry of Finance, Department of Revenue, Represented by its Secretary, (Revenue), New Delhi & Others (2011) 4 ALD 383**, the Hon'ble High Court of Andhra Pradesh has held with regards to the Prevention of Money-laundering Act, 2002 that:
  1. Attachment of the property involved in money laundering is not violative of Articles 14, 21 and 300 A.
  2. Where money laundering involves more than one transaction and where one or more transactions are proved to be connected with money laundering, the connected transactions are also presumed to be money laundering for the purpose of proceedings of attachment and confiscation.
  3. The placing of the burden of proof is not only on the prosecution for the offences under Section 8, but also in respect of attachment and confiscation provisions under Chapter III. But where the property as proceeds of crime is under the control and custody of a person not accused of an offence under Section 3, only presumption under Section 23 arises but not the onus of proof under Section 24.
- Further in the case of **Radha Mohan Lakhotia & Another v. The Deputy Director, PMLA (2010) 5 BomCR 625**, the Hon'ble High Court of Judicature at Bombay has observed that the Adjudicating Authority if has reason to believe that "any person" has committed an offence under Section 3 of the Prevention of Money-laundering Act, 2002, may serve notice upon such person calling upon him to indicate his source of income, earning or assets, out of which or by means of which he has acquired the property attached under Section 5(1) of the Act. Once again, the Legislature has unambiguously used the term "any person" and not person charged of having committed a scheduled offence. Further, Section 8 of the Prevention of Money-laundering Act, 2002 contemplates adjudication to be done by the Adjudicating Authority after provisional attachment order is passed under Section 5 of the Act and upon receipt of complaint under Section 5(5) of the Act.
- The Hon'ble Supreme Court in **V. Sejappa v. State (2016) 12 SCC 150** has held that, it is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and a presumption would arise under Section 20 of the Prevention of Corruption Act. Mere recovery of money is not enough to draw the presumption under Section 20 of the Act.
- Also, in the case of **Mukhtiar Singh v. State of Punjab (2017) 3 SCC(Cri) 607**, the Hon'ble Supreme Court has held that till demand of bribe is established by cogent proof; the accused should be considered innocent despite recovery.

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## **Session III by Sh. M.D. Upadhyay (Former Dy. Director, Prosecution Department, Bikaner)**

*Continuance of Disciplinary and Criminal Proceedings simultaneously*

- The Hon'ble Resource Person stated that Section 28 of the Prevention of Corruption Act,

1988 provides that “*The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.*” which allows for simultaneous continuance of disciplinary proceedings with the proceedings under this Act.

- There is no legal bar for the continuance of disciplinary and criminal proceedings simultaneously. The same was illustrated with various case laws as discussed below.
- In the landmark case of **State of Rajasthan v. B.K. Meena & Ors. (1996) 6 SCC 417**, the Hon’ble Supreme Court held that the approach and the objective in the criminal proceedings and the disciplinary proceedings are altogether distinct and different. Staying of disciplinary proceedings pending criminal proceedings should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.
- The Hon’ble Supreme Court in **State Bank of India and others v. R.B. Sharma (2004) 7 SCC 27**, has held that proceedings in criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common.
- Lastly, in the case of **Kendriya Vidyalaya Sangathan and others v. T. Srinivas (2004) 7 SCC 442**, the Hon’ble Supreme Court has held that proceedings in a criminal case and departmental proceedings can go on simultaneously and the stay of departmental proceedings cannot be and should not be a matter of course. The advisability, desirability or propriety, as the case may be, in regard to a departmental inquiry has to be determined in each case taking into consideration all facts and circumstances of the case.

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**Session IV by Sh. Renjith Thomas (Assistant Professor, National Law University,  
Jodhpur)**

*Sentencing Practices in Corruption Cases*

- The Hon’ble Resource Person started off the discussion by emphasizing and elaborating upon the cardinal principles of the criminal justice system which are namely;
  1. Dignity;
  2. Fairness; and
  3. Truth
- The above also serve as the principle values of sentencing. The Hon’ble Resource Person stated that there is no clear cut formula or clarity on sentencing. Doing that would take away the power of discretion from the judges and the same would render them unable to do justice in a particular case based on its merits.
- The Hon’ble Resource Person stated that there are certain things to be kept in mind while deciding on sentencing in cases of corruption, these being:
  1. Nature and circumstance of the offence;
  2. History and characteristics of the person;
  3. Whether it involved more than one instance of bribe;
  4. Monetary value of the case; and
  5. Benefit received by the accused.
- The job of the judge while pronouncing a sentence is also to see the deterrent effect of the same on the convict and the chance for reformation.
- The Hon’ble Resource Person requested the audience to read the below mentioned readings for a better understanding of sentencing policy in India:
  1. 262<sup>nd</sup> Report of the Law Commission of India chaired by Justice A.P. Shah (Submitted on 31st August 2015 on the issue of death penalty in India); and
  2. Individualisation of Punishment, Just Desert and Indian Supreme Court Decisions: Some Reflections by Dr. Anju Vali Tikoo ILI Law Review Vol. II, Winter Issue 2017

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- Conference was concluded with vote of thanks to the Hon’ble Dignitaries and all those who contributed in organizing the same.

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