CHAPTER IV

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Public Apathy:

Unlike the traditional crimes, bribery and corruption does not carry any stigma with it and absence of any stigma enables this new category of criminals to move about in the society without any loss of status or respectability. The society or the community at large has meagre means to know and learn of the criminality of such persons, even the conviction and punishment of these upper class criminals is either not known to or not taken due notice of by the people. Publication of such conviction and punishment in newspapers is only casual in nature. It is necessary to give due and sufficient publicity in detail of those persons, firms and other organisations which have been convicted for corrupt practices, this publication will certainly create a climate against those offenders and it should be supplemented by a relatively more organised resentment by the community.
In the present day political set up the society is represented by the State. The relation between society and the crime is same as the relation between the State and crime. The State is meant to provide the individual, the protection which he could not expect to get otherwise than in a social organisation. A corrupt man is out for an easy gain at the expense of other persons and in whose good he is hardly interested. This is a matter of common knowledge that a number of penal statutes are not obeyed and enforced merely because they fail to keep time with the deep rooted concepts in a society. With the breaking of socially organised units into pieces, the members become more individualistic and self centred and unconnected with social responsibilities which in turn results in increase in crime rates.

Corruption and bribery continue to multiply partly because of their nature and partly because of the State's attitude of laissez faire and furthermore because of lack of any concerted effort and

organised opposition by the society. Social consciousness is an important requirement to suppress anti-social activities in a society. Social consciousness against corrupt activities of a class of people may arouse through wide publicity to the convictions of persons for socio-economic crimes like corruption and bribery. Such publication would go a long way to degrade these criminals in the estimation and eyes of their fellow community beings, resulting in much improvement in the overall situation of socio-economic crimes. This may even in appropriate cases result in ex-communication of such criminals by their community and society. Publication may create a climate against corruption and it should be supplemented by a relatively more organised resentment by the community.

By today's standards it seems rather odd to argue that people who have the political power or highhanded protection to avoid prosecution are not criminals whatever may be the gravity of their offence. Political pressure is the most powerful weapon in its effort to corrupt the enforcement process. From the legislator's standpoint, regulatory agencies have two important advantages over the criminal justice system.
For one thing, they make the lawmakers' job easier by taking over the responsibility for the formation of specific rules, standards and guidelines. In the case of environmental pollution, for example, pollution must be identified, their effects on the public's health must be determined and a safe level of exposure must be set. In addition, numerous other issues concerning the specific techniques to be used to achieve these goals and the economic costs involved, must be decided. Although a legislative body could handle such questions, such a task would be extremely time consuming and would involve matters well beyond the expertise of most legislators. But the availability of such expertise is not the only advantage legislators have seen in the creation of regulatory agencies. Such agencies also provide a convenient place to pass the buck when politicians want to avoid making decisions that are likely to be unpopular with an important constituency.24

Politics and bureaucracy must conform to mitigate the true social objectives of the nation. In our system, bureaucracy is a dirty word in the political

lexicon and bureaucrats are the favourite whipping boys of the government and of Parliament when things seem to go wrong — and yet in a period of transition it is bureaucracy based on the concepts of permanence, independence, neutrality and anonymity which provides the element of consistency and continuity in a democratic framework. Particularly in conditions of political anarchy and social chaos, it is the permanent services with which provide ballast for the ship of State. The overall achievement in respect of anti-corruption drive depends mainly upon the bureaucracies who are the guardians of law enforcement in the country. Existing laws for curbing corruption and malpractices are sufficient for the purpose. The only thing to be done is to enforce these laws rigidly. Nothing should be allowed to interfere while the law takes its course. By giving shelters to the corrupt people and anti-social elements, the parties in politics will try to continue to hoodwink the people whom they profess to serve. People at large have therefore to play a major role in the matter. They must

be fearless, upright and ready to face any eventuality in upholding the ideal of honesty and truth. Sufferings may increase in the process, but such sufferings will lay the foundations of a society free from corruption.\footnote{26}

Time has come to launch such a campaign for eradicating corruption from public life. Corruption in public life causes economic recession and economic recession jeopardise personal insecurity in the society. People are suffering and feel themselves increasingly to be insecure in their accustomed life-style and expectations.

Corruption can exist only if there is someone willing to corrupt and capable of corrupting. Both this willingness and capacity to corrupt is found in a large measure in the industrial and commercial classes. Public participation in controlling corruption in the society is a dire need. Everyone in the society has duties to the community in which alone free and full development of his personality is possible.\footnote{27}

\footnotetext[26]{Sen, S. (1979): Tim to Fight Corruption; Mainstream, March 3, p 23}
\footnotetext[27]{Neub, R. (1988): Police and Law Enforcement; p. 55.}
In the vast field of administrative action it is most likely that the procedures and practices in the working of government offices are cumbersome and delatory. Similarly the procedures and practices to be followed in the process of implementation of the Prevention of Corruption Act, are in most of the cases ridiculous in nature. Several procedures of the Act, directly or indirectly caused delay in investigation. Delay occasioned in securing the presence of official witnesses for examination. Unless the officials be made available for interrogation within a limited period, the objective of investigation may be defeated. In cases involving assets disproportionate to one's known sources of income, there is usually delay in obtaining from accounts officers, statements regarding pay, allowances etc. of the government servants concerned. Delay in investigation also happened in cases where inquiries in foreign countries required. The process of obtaining reports from foreign countries is to depend on Indian missions abroad. It cannot be a satisfactory arrangement in serious and complicated cases where quick investigation is an unavoidable need. Moreover in many cases
lacking in examination of all relevant points is the outcome of such enquiries. Difficulties may also arise while expert opinion or technical assistance is to obtain in a case. As it is very much difficult to achieve a satisfactory coordination amongst inter-departments, such opinion or technical assistance which are to obtain from different agencies cause delay in investigation. Some other causes of delay in investigation and trial had enlightened in the Santhanam Committee Report on Prevention of Corruption such as delay in production of files of departmental inquiries to the Police Establishment for scrutiny, delay in conducting departmental proceedings etc. In most of the cases, the departmental or disciplinary proceedings against corrupt public servants takes lot of times and ultimately defeated the objective of the Act. These delays are undesirable from every point of view. They whittle down the deterrent effect of punishment. Examination of witnesses after a considerable lapse of time creates problem. Instances of pending departmental or disciplinary proceedings are innumerable. Such cases in the departments of the government are countless and inordinate delay in each case is a common phenomena. Several causes for such
delay may be assessed on examination of departmental actions taken on such cases. Some of these causes are (1) lack of proper knowledge on the concerning rules and procedures of the dealing clerks as well as of the officer in authority. In the existing system of office procedures, the files are to put up by the concerning clerk with the actions to be taken by the authorised officer and the officer concerned is to take decisions on the actions to be taken in a case and to process accordingly. In the process, due to ignorance of the procedures and the matters involved in the proposed action, the dealing clerk takes much time in placing the file to the officer. The officer who is to take decision, if dependable on the clerk in respect of the actions to be taken may create an additional problem of taking action timely. Under many circumstances, actions on the departmental or disciplinary proceedings seems to have taken in a wrong direction leaving a scope for the defendant to challenge the action in the court and ultimately the defendant becomes successful in spite of consistent delinquency. Both non-action and delay in action in most of the departmental cases seems responsible for defeating the corruption cases. (2) creation of special favour by keeping close the disciplinary authority
by false means of the delinquent public servant. This is a type of corruption. The dealing clerk by using a delaying tactics keep the file pending for indefinite period so as to suppress the case, taking any action at his own will in exchange of monetary benefit obtained from the corrupt public servant. Similar attitude also may be taken by the officer as disciplinary authority. (3) Highhandedness of the corrupt public servant is an another cause of failure in taking penal action against corruption. Political influence and interference of other persons in power also cause escape of corrupt public servants from any penalty to be imposed as per provision of the Act.

The investigating officer should see that there is no undue delay in recording statement for a unjustified period. Unexplained long delay on the part of the investigating officer in this matter will render evidence of such witnesses unreliable and cast a cloud of suspicion on the credibility of the entire wrap and wool of the prosecution story. When statement of witnesses though examined on the date of occurrence were not reduced to writing until two days later it was held that, there evidence was of a tainted in

nature and therefore could not be acted upon.\textsuperscript{29} If investigation and eventual trial of cases are delayed, the chances of miscarriage of justice and expenses of litigation increase tremendously. Delay gives an opportunity to the opposite party to win over witnesses and thus to deflect the course of justice. It also results in loss of evidence for disinterested witnesses not being personally involved with the incident may often forget details of the occurrence after a certain lapse of time. Then again, many a time even the remedy provided by the law becomes infructuous due to efflux of time. Thus it is rightly said that "Justice delayed is justice denied."\textsuperscript{30}

\begin{itemize}
  \item \textsuperscript{29} (CC Para 23): Banwari - V - State of Rajasthan, 1979, CR.L.J. 161 (Raj.);
  \item \textsuperscript{29} Haradhcn - V - State of A.P., 1981 CR.L.J. NCC 158 (Cal).
  \item \textsuperscript{30} Ginduchi Patnaik - V - State of Orissa, 1985;
  \item \textsuperscript{30} Cr.L.J. 645 (Orissa).
\end{itemize}

The new Criminal procedure Code of 1973 has emphasised the need for speedier investigation in criminal cases and in the case of petty offences has either barred investigation beyond a certain period of time or barred the taking of cognizance thereof by the court after a fixed time schedule. The Supreme Court in a number of cases has severely condemned both dilatory investigation and tardy administration of justice and held both to be violative of fundamental right guaranteed under Art. 21 of the Constitution. Thus where the period of limitation set by Sec. 45 of the new Code for filing a complaint or chargesheet had already expired the High Court either quashed the investigation, or quashed the proceedings pending in court. The High Courts and the Supreme Court have been quite concerned about the undue delay that every now and then comes to their notice in the disposal of cases and

31. Nimeon Sangma - V - Govt. of Meghalaya, 1979; Cr.L.J. 941 (SC) and Hussainara Khatoon - V - State of Bihar, 1979; Cr.L.J. 1036 (SC) 1979 Cr.L.J. 1045 (SC) and 1979 Cr.L.J. 1052 (SC)
32. Balgopal Toenka - V - State of M.P., 1983 Cr.L.J. 570 (Cal.)
33. Wasata - V - State of Maharashtra; 1984 Cr.L.J. 410 (Rom)
have often quashed long pending cases on ground of harassment to the accused. Indeed the High Courts and the Supreme Court have been quite concerned about the undue delay that every now and then comes to their notice in the disposal of cases and have often quashed long pending cases on grounds of harassment to the accused. Thus in Prithi Raj's case 34 the Punjab and Haryana High Court quashed the pending case under sub-section 430/114/189 I.P.C. as in the opinion allowing the proceeding to continue after a period of eleven years was nothing but harassment to the accused. Similarly in Kapil Das Sukla's case 35, the Supreme Court quashed the case under sub-section 438/477 A I.P.C. as 10 years had already passed during which the accused had been kept in suspense. So also was the case of Uma Shankar 36, where the Supreme Court upheld the order of the Patna High Court quashing a charge

under Sec. 7 of the Essential Commodities Act, 1955
as 20 years had already elapsed and the trial had not
yet made much headway. It must however, be said in all
fairness to the investigating officers, that at present
their strength is inadequate and in addition to their
duties as investigating officers, they are also saddled
with all sorts of law and order, bandobast and
V.I.P. duties which take a lot of their time to the
detriment of investigation of cases.37 The Public Accounts Committees of States are examining the financial
irregularities and misappropriation cases and in all
the occasions it is a common feeling of the Committees
that prompt action should be taken to laud up the officials for any irregularity. It has been the experience
of the Public Accounts Committee that, at present little
action is taken by the heads of departments when such
cases come to their notice. Thus there being no
fear or awe of the authority, the irregularities are
on the increase and more defects are creeping into
the system.38

37. Sharma, Dr. Shankar Dayal (1985) : Sardar Vallabh
Bhai Patel Memorial Lecture- II on "Rule of
Law and Role of police", S.V.P. National Academy,
Hyderabad ; p.14.
38. Public Accounts Committee (1953) : Audit Report,
Assam.
Delay in investigation and taking action against corrupt public servants at all levels at all times travelling from the high officials down to the lowest official responsible for estimating, spending and accounting causes corruption on the increase day by day. Delay in both internal and public inquiries have adverse effects in trapping corrupt public servants. The same problems more or less exists in all the countries of the world. The internal inquiries tend to be leaked making the distinction a fairly academic one, but greater difficulty is experienced in trying to obtain the reports of internal inquiries. 39

**Procedural Lacunas In Trial And Investigation:**

Sec. 17 of The Prevention of Corruption Act, 1988 (Sec.5-A (1) of The Prevention of Corruption Act, 1947) listed the persons authorised to

investigate corruption cases. According to this section, no Police officer below the rank -
(a) in the case of the Delhi Special Police Establishment of an Inspector of Police;
(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan areas notified as such under sub-section (1) of Sec.8 of the Code of Criminal Procedure, 1973 of an Assistant Commissioner of Police;
(c) elsewhere of a Deputy Superintendent of Police or a Police officer of equivalent rank.

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant.

Provided that, if a Police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be or make arrest therefor without a warrant:

Provided further that an offence referred to in clause (b) of sub-section (1) of Sec.13 shall not be
investigated without the order of a Police officer not below the rank of a Superintendent of Police. 40

The Santhanam Committee on Prevention of Corruption socked out some lacunas in trial and investigation of corruption cases by anti-corruption agencies. Special provisions of procedures for certain categories of public servants without maintaining uniformity in such laws creates difficulty in discharging duties effectively. Requiring prior concurrence by the Special Police Establishment for starting inquiries or investigations against Railway Gazetted officers is a lacuna. There is no justification for such a condition. Although directives lay down that facilities should be offered to the Special Police Establishment by Ministries and Departments in obtaining official files and documents, such facilities have not seems provided causing delay and difficulties. The delatory act of producing official files and documents may provide scope to tamper or destroy materials. Similarly in some other existing procedures to be followed in investigation and trial of cases creates delay and inefficiency in the process. The same

problems also being faced by the State vigilence organisations. Communication of corruption cases to the vigilence establishments by the respective departments is much less. Only a few cases are being reported. The departmental actions to be taken after reporting are also carried on in a very irregular and slow process. Moreover, the staff of these vigilence organisations are not sufficient to work with the objective of the Prevention of Corruption Act, so promptly and efficiently. Such lacunae are to be removed for an efficient functioning of the anti-corruption organisations.

It has often been found that want of proper appreciation of the law of evidence and the ingredients of the offence, the investigating officers fail to collect the requisite evidence in course of the investigation and unwittingly keep loopholes through which the accused finds an easy way out of the grip of law. Every often even the requisite evidence is not collected in accordance with the provisions of the procedures of the law and thereby making it difficult

   Ch. 14, p. 130.
to use such evidence in a court of law. Thus only a sound knowledge of the ingredients of the substantive law and the rules of evidence and procedure can enable an investigating officer to fully comprehend the requirements of the law for court purposes. 42

The Law Commission of India too felt that many cases are acquitted in court, because most of our investigating officers, not being law graduates and not having sufficient knowledge of law and court procedure, fail to understand if a particular piece of evidence is important to the prosecution, whether any links in the chain of circumstantial evidence are missing, whether any connected subject requires to be investigated in order to fill up lacunas in the prosecution case and such other related matters. 43 In many advanced countries, a good deal of emphasis is given on the legal qualification of the candidates at the time of recruitment to the investigating branch of the Police. 44 If a lawyer can know what to keep from a

jury, a lawyer should also know what to get before a jury. Lack of legal knowledge of an investigating officer resulted in spoiling good many cases.

Under the existing provisions of staff and other facilities of various anti-corruption establishments, a wide coordinated action of other connected departments are needed. A vast experience of inquiring corruption cases by vigilence and other anti-corruption departments indicates that, such a coordination is difficult to achieve to the desired extent. The paradoxical achievement is due to various reasons. So, all the specialised staff if under the control of the head of the anti-corruption organisation, then perhaps a better coordination of all such specialised personnel be possible.

Trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the code in respect of cognizable cases. But, only a limited cases proceed on to the trial stage due to failure in prior levels.

Another major lacuna of the Prevention of Corruption Act, is that the Act and the provisions of

the I.P.C. and conduct rules does not cover the LA's, W's who may practise corruption with free hand. This Inconsistency of the Act appeared in the litigation of the case of R.S.Nayak - V - A.R. Antulay. Here offences as set out in Sec. 6 of the I.P.C. 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 which is alleged to have been misused or abused for corrupt motives. "LA is not comprehended in clause seventh of Sec.21 so as to be a public servant.

Non-Relief Of Prosecution Cases at Appealate Level:

Offences of bribery and corruption have now become the subject matter of a special branch of criminal law. For the investigation and trial of these offences, the special provisions of the Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952 have to be applied in preference to the general law. Offences of accepting or obtaining any illegal gratification or accepting or obtaining any valuable thing without consideration by a public servant and the abetment of these offences are dealt with by Sec.161, 165-A of the I.P.C. In addition to these provisions, a special
offence of criminal misconduct by a public servant has been created under Sec. 5 of the Prevention of Corruption Act. Failure of prosecution cases at appellate level arises due to inconsistencies in framing up and in any stage of their investigation and trial as per provisions indicated above. Where the order made by a Civil Court appointing a Commissioner for seizing the books of the plaintiff is null and void as being without jurisdiction under the Civil Procedure Code, the person so appointed is not a public servant and even when a bribe is offered to him, the offering of the bribe is not an offence under Sec. 165-A of the Penal Code. In Daulat Ram - V - State of Punjab, assumption of cognizance by the Magistrate, of an offence under Sec. 182 of the Penal Code on such a chargesheet filed by the police, without the complaint in writing of the public servant concerned is wrong and incompetent, and the trial being without jurisdiction ab initio, conviction cannot be maintained.46 In Padam Sen - V - State of Uttar Pradesh,47 the accused was charged under Sec. 165-A

46. Daulat Ram - V - State of Punjab (1962); AIR 1206
Penal Code for having offered a bribe to the respondent, a person appointed by a Civil Court as Commissioner in a suit under Sec. 75 and Order 26 of the Code of Civil Procedure. The Commissioner was appointed for seizing the account books of the plaintiff. In this prosecution case, the trial court convicted the accused and on appeal, the High Court confirmed the conviction. On appeal, the Supreme Court allowed and order of conviction made against the appellant was set aside. He was acquitted of the offence under Sec. 165-A. It was held in this case that, Sec. 75 of the Code empowers a civil court to issue a commission only for the four purposes set out in the section. A commission cannot be issued for any other purpose under Sec. 75. Therefore, the Civil Court had no power to appoint a Commissioner for seizing the books of account of the plaintiff and the order appointing the respondent as Commissioner was therefore null and void. The second contention was that Explanation 2 to Sec. 21 of the Penal Code provides that the word 'public servant' as used in the section covers "every person who is in actual possession of the situation of a public servant, whatever legal defect there might be in his right to hold that situation". In the present case, there was no existing office of Commissioner, nor had the accused any power to appoint the
Respondent as commissioner for the purpose of seizing the plaintiff's accounts books. It must therefore be held that the explanation did not apply to the appointment of the respondent as commissioner, and as his appointment was null and void, he was not a public servant within the meaning of Sec. 21, Clause 4 of the Penal Code. Since the respondent was not a public servant at the time when the bribe was offered to him, the offence under Sec. 165-A was not committed by offering him money.

Many cases at appellate level fail due to absence of certain relevant and accurate assessment procedures of properties disproportionate to the known sources of income. According to Sec. 5(1)(e) of the Prevention of Corruption Act, 1947, a public servant is said to commit the offence of criminal misconduct if he or any person on his behalf is in possession or has at any time during the period of his office, been in possession for which the public servant cannot satisfactorily accounts of pecuniary resources or property disproportionate to his known sources of income. In order to establish that a public servant is in possession of pecuniary resources and property, disproportionate to his known sources of income, it is not imperative
that the period of reckoning be spread out for the entire stretch of anterior service of the public servant. There can be no general rule or criterion, valid for all cases, in regard to their choice of the period for which accounts are taken to establish criminal misconduct under Sec.5(1)(e). The choice of the period must necessarily be determined by the allegations of fact on which the prosecution is founded and rests. However, the period must be such as to enable a true and comprehensive picture of the known sources of income and the pecuniary resources and property in possession of the public servant either by himself or through any other person on his behalf, which are alleged to be so disproportionate. In State of Maharashtra- (Appellant) - V - Pollonji Darabshaw Daruwalla (Respondent)"48, the appeal failed on the contention that, the High Court was in error in holding that a public servant charged for having disproportionate assets in his possession for which he cannot satisfactorily account cannot be convicted of an offence under Sec.5(2) read with Sec. 5(1)(e) of the Act. Unless the prosecution disproves all

possible sources of income. The respondent must be given the benefit of doubt. Similarly in Bal Krishna Sayal (Appellant) - V - State of Punjab (Respondent) the prosecution has failed to establish its case beyond reasonable doubt and the appellant is entitled to this benefit of this situation. As such the appeal prosecution has failed at appellate level.

To establish an illegal gratification the prosecution must prove the nexus between the illegal gratification and the official act. Otherwise it will fail on that ground. Negligence on the part of the prosecution also may cause failure in leading the evidence in connection with the official act.

In most of the cases, the causes of failure of prosecution at appellate level may be attributed as:

1. negligence on the part of the disciplinary authority.
2. negligence on the part of the prosecuting authority.
3. inefficiency of the authorities arising out of

lacking knowledge in relevant discipline and thereby fail to establish the charges.

(4) suppression of facts in investigation in consideration of bribes.

A charge under sec. 7-A of the Prevention of Corruption Act, 1947 (new Section 22) is one which is easily and may often be lightly made but, in the very nature of things difficult to establish, as direct evidence must, in most cases, be meagre and of a tainted nature. Those considerations, however, cannot be suffered to relieve the prosecution of any part of the burden which rests upon it to establish the charge beyond reasonable doubt. If after everything that can legitimately be considered has been given its due weight, room still exists for taking the view that however strong the suspicion raised against the accused, every reasonable possibility of innocence has not been excluded, he is entitled to an acquittal.51 In case of the accused satisfactorily accounted for acquisition of assets, charge under sec.5(2) cannot be sustained and in that case the prosecution will fail. The charge against the appellant was that, during a certain period

he committed criminal misconduct in the discharge of his duties as a public servant and obtained pecuniary advantage for himself and others by giving contractors favourable rates in respect of earth work done by them and by acquisition of assets worth more than Rupees three lakhs which were disproportionate to his known sources of income and thereby committed an offence punishable under Sec. 5(2) and with Sec.5(1)(a) to 5(1)(d) of The Prevention of Corruption Act, 1947. The Supreme Court upon a review of the evidence as a whole found that the appellant has satisfactorily accounted for the acquisition of his assets to the extent of Rupees three lakhs. It was therefore held that the presumption under Sec. 5(3) which has since been amended cannot be applied. It was further held that in the absence of presumption arising under Sec.5(3) of the Act, the conviction of the appellant for the charge under Sec. 5(2) of the Act, cannot be sustained. 52

Sometimes the prosecution against corrupt public servant failed at appellate level due to non-fulfilment of essential conditions as per provision of the

relevant section. When the provisions of Sec. 6 are examined, it is manifest that two conditions must be fulfilled before its provisions become applicable. One is that the offence mentioned therein must be committed by a public servant and the other is that person is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central government or the State government or is a public servant who is removable from his office by any other competent authority. Both these conditions must be present to prevent a court from taking cognizance of an offence mentioned in the section without the previous sanction of the Central government or the State government or the authority competent to remove the public servant from his office. If either of these conditions is lacking, the essential requirements of the section are wanting and the provisions of the section do not stand in the way of a court taking cognizance without a previous sanction. On the plea of lacking essential conditions, the prosecution in S.A. Venkataraman - V - The State failed at appellate level. The provisions of the section 6 of

The Prevention of Corruption Act, is not applicable when the accused is not charged under Sec. 161 or Sec. 165 of the I.P.C. or under sub-section (2) or sub-section (3-A) of section 5 of The Prevention of Corruption Act, but under certain other sections of the Penal Code. Under such circumstances, the prosecutions in Bhup Narain Saxena - V - State 54, Cm Prakash - V - State 55, State - V - Pandurang Bubareo 56, Amarendra Nath Roy - V - State 57, and Ganga Narain - V - State 58 failed at appellate level.

The law of sanction be invariably implemented irrespective of the nature of offence of

    Allahabad 35.


57. Amarendra Nath Roy - V - State ; A.I.R. 1955;
    Calcutta 236.

corruption. It cannot be evaded by referring to an offence which does not require sanction. In N.R.Sinha - V - Aftabuddin 59, Osman Mistry - V - Atul Krishna 60, Bas-Ul-Haq - V - State of West Bengal 61, and N.Brahmeswararao - V - Sub-Inspector of Police 62, the question which required answer was whether the law of sanction could be avoided by referring to an offence which did not require sanction although the facts disclosed also an offence which requires sanction. Held that the law of sanction for prosecution under Sec. 161 or for an offence under Sec. 5(1)(d) of The Prevention of Corruption Act, as provided by Sec. 6 of The Prevention of Corruption Act, cannot be evaded.

When the facts of corruption cases upon which accused is to be prosecuted did not consider by the sanctioning authority, the prosecution must fail at the appellate level. In Mohd. Iqbal Ahmed - V - State of A.P. 63, conviction and sentences passed on the appellant were quashed.

Grant of sanction by others other than competent authority also vitiates prosecution. Competency of authority to grant sanction to be proved by rules. In V.V. Joshi - V - State 64 the accused, a class III Railway employee was appointed by Divisional Personnel officer. Sanction for prosecution was granted by Divisional Medical Officer. Divisional Medical Officer and Divisional Personnel Officer are officers of equal rank. Divisional Personnel Officer made the appointment as an officer who had been delegated with the powers of a General Manager. Nothing to show that powers of General Manager in this respect were delegated to Divisional Medical Officer. Divisional Medical Officer not being competent to remove the accused, the sanction 63. Mohd. Iqbal Ahmed - V - State of A.P., A.I.R. 1979, 3.C. 677, 1979 Cr.L.J. 633, 1979; A.C.C. 132.
64. V.V. Joshi - V - State; A.I.R.1968; Punjab 110.
granted by him was invalid. As such conviction of the accused set aside, in Republic of India - V - Khagendra Nath, the prosecution of the accused failed at appellate level due to incompetency to sanction accorded by lower authority. In this case, the Executive Committee of the Central Board of State Bank of India who is the authority to appoint and dismiss officers of all categories of the State Bank of India did not accord sanction of prosecution. The Local Board who has no such power, accorded sanction. Sanction for prosecution for offences under Prevention of Corruption Act, had to be accorded by Executive Committee. Nothing to show that Local Board is in any way authorised under the Act of Regulations to accord sanction or to dismiss an officer. Sanction order by Local Board cannot be said to be valid in the eye of law. It was held that, in the absence of proper sanction the prosecution becomes illegal.

It is for the prosecution to show that valid sanction given by the authority authorised to give it under Sec. 6(1) of the Act, and such authority is no doubt the authority competent to remove the employee in

65. Republic of India - V - Khagendra Nath, 1982;
Cr.L.J. 961 (Orissa)
question from his office and by virtue of Article 311 of the Constitution of India and Rule 1705 of the Railway Establishment Code. Volume 1, such an authority was the authority who had appointed the employee to the post held by him substantively. It is for the prosecution to show that valid sanction had been given.

On the ground of invalid sanction accorded in Makhan Lal - V - State\(^66\), Matajong Dobey - V - H.C.Bhari\(^67\), Madan Mohan Singh - V - State of U.P.\(^68\), Kohanlal Keshavlal - V - State\(^69\) and Rampukar Singh - V - State\(^70\), the convictions of accuseds set aside. In Bhuneswar Prasad - V - State of Bihar\(^71\) and Ram Pukar Singh - V - State\(^72\) no sanction order was duly proved. As such the

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70. Rampukar Singh - V - State, 1981; Cr.L.J. 1691.
entire prosecution of the appellant failed for want of a duly proved sanction order as required by law.

When an essential part of the prosecution case has disbelieved in which the other part was dependent, the prosecution is to fail. In Hari Dev Sharma - V - State, the High Court disbelieved the part of the prosecution case which has the genesis of the case. The prosecution case was one integrated story. It was held on evidence that -

(a) if the High Court did not accept a vital part of the story, the other part did not stand by itself and could not be accepted.

(b) It was not the prosecution case that the money which was recovered from the appellant, was the amount that the appellant had asked for from the complainant. This was a new case made by the High Court.

(c) The High Court having disbelieved a part of the prosecution case on which the other part was dependent, it is not safe to sustain the conviction of the Appellant.

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Similarly in Loknath Dash - V - State of Orissa\(^74\), the prosecution has failed and the conviction of the appellant set aside. Sometimes the prosecution fails due to unreliable substantive evidence. In Suraj Mal - V - State\(^75\), Kailash Chandra Babu - V - State of Orissa\(^76\) and Ram Kishore - V - State\(^77\), it was held that, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable.

When a prosecution failed to prove the guilt of taking bribe by the accused, the prosecution fails at appellate level. Where the accused, an Engineer was convicted by the special Judge under Sec.13(1)(d)

\[^{74}\) Loknath Dash - V - State of Orissa, 1977; Cr.L.J. 1268; 1977 Cut.L.R. (Cri.88) 1977, 43 Cut.L.T. 478 (Cri.)SI.


\[^{76}\) Kailash Chandra Babu - V - State of Orissa,1988 (2) Crimes 609.

(Old Sec. 5(1)(d) ) read with Sec. 13(2) (old sec. 13(2)
and Sec. 7 (old sec. 161 I.P.C.) and the conviction was
upheld by the High Court, Honourable Supreme Court set
aside the conviction as the prosecution failed to prove
the guilt of the accused. It was observed that the fou-
ndation of the prosecution case of the demand made by
the accused for bribe has been shaken to a grant extent.
It has cast a grave doubt on the subsequent event that
was alleged to have taken place in the matter of giving
of bribe to the accused and the recovery of bribe money
from him coupled with the unusual behaviour of the con-
tractor in purchasing sweets and fruits for the accused.
The accused was found to be honest and his service rec-
ord showed that he was an officer of integrity through-
out his career. He has no movable or immovable property.
For the defence of the case he has borrowed rupees six
thousand from his G.P.F. account. The accused was acqi-
tted. 78

78. S.V. Nanjudiah - V - State (Delhi Administration )
Cr.R. 303; (1987) 3 Serv-L.J. 244; 1987 Cr.L.R.
(S2) 580; (1987) 2 Supreme 345; (1987) Cal. Cr.L.R.
(S2) 189 ; 1987 All.Cr.C. 450; (1987) 3 IJ.
Rev. 1.
In Amrit Lal - V - State of Punjab 79
(a) the evidence about the demand for illegal gratification having been made comprised of the solitary statement of an interested witness.
(b) there was then no evidence about any talk between the giver and the receiver that the money changed hands as a bribe.
(c) the appellant had been able to produce two subordinates from his office who said that the money had remained lying on the table and had never been out in his pocket by the appellant.
(d) the defence evidence found support from the official records which did not appear to be fabrication.

It was held that under the circumstances the case would not be described to be quite free from doubt, and the appellant's conviction and sentence were therefore, liable to be set aside.

In Jai Ram Lakhe - V - State of Punjab60, the appellant is acquitted, as the facts are sufficient to raise a serious doubt about the guilt of the appellant.

1978 Cr.L.R. 180; 1978 UJ(SC) 266;(1978)
2SCR 104, 1978 SCC (Cr) 357;1978 SC Cr.R.235
It was held in this case that—
(a) The trial court and the High Court have not taken the relevant facts and circumstances into consideration even though they have been established by the evidence on record and have a direct bearing on the guilt of the appellant.
(b) The currency notes were recovered from one S and not from the possession of the appellant. There was no evidence to show that there were any visible marks which could show that they had been handled by the appellant. These facts are sufficient to raise a serious doubt about the guilt of the appellant.

In the case of Kanchan Singh Dholak Singh Thakur—V—State of Gujrat, the conviction of the appellant under Sec. 5(2) of The Prevention of Corruption Act, (New Sec. 13) was based mainly on Entry A-18 from which it appeared that the appellant misappropriated a sum of Rs. 1750/-. It was also alleged that

(1979) 4 SCC 599; 1977 Mad. L.J. (Cr) 589;
the appellant forged the signature of R on various dates to show payment of Rs.2.50 although these payments were not made to R at all. The entire conviction rested on the uncorroborated testimony of an expert (P.C.). The High Court found that the expert had opined that in case of even those persons who admitted to have signed in token of the payment, the signatures of the witnesses were forged. It was held by the Supreme Court that -

(a) At any rate, the expert's opinion is not reliable. Once it is proved that the appellant had not forged his signature on the Entry, there is no legal evidence to prove, - (i) the charge of misappropriation or (ii) use of forged document or (iii) the charge of corruption or (iv) the allegation of forgery.

(b) It is well settled that, in order to rely on the evidence of an expert, the court must be fully satisfied that he is a truthful witness and also a reliable witness fully adept in the art of identification of handwriting in order to opine whether the alleged handwriting has been made by a particular person or not.

(c) As the evidence of the expert has been disbelieved by the High Court on the most material points, it is most unsafe to base the conviction of the appellant merely on the testimony of the expert.
(d) Apart from that, the possibility that the signature in the entry might have been forged by one of the other officers and not the accused, has not been excluded by the prosecution.

(e) Therefore the prosecution has not proved beyond reasonable doubt in the result, the conviction passed on the appellant is set aside and he is acquitted of the charges framed against him.

In case of Prem Kumar - V - State of Punjab, the appellant's conviction under Sec.5(2) of the Act (New Sec. 13) is set aside due to absence of an independent corroboration of the evidence.

Section 20(1) (old section 4(1) ) requires presumption of guilt of accused to be raised, whenever it is shown that accused person has accepted any gratification other than legal remuneration or any valuable thing. In case of failure to prove the presumption, the prosecution will fail ultimately at the appellate level. The scope and extent of this presumption has been expounded in the cases of -

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82. Prem Kumar - V - State of Punjab (1978); CLR 356 (Punjab)

It was held that—

(a) The initial burden of proving that the accused accepted or obtained the amount other than legal remuneration, is upon the prosecution.

(b) It is only when this initial burden is successfully discharged by the prosecution that the burden of proving the defence shifts upon the accused and a presumption would arise under Sec. 20(1) (old Sec. 4(1)) of the Act.

(c) The accused would have to discharge this burden by disproving that he accepted or obtained the amount as gratification other than legal remuneration.

(d) Therefore the prosecution evidence is first required to be seen by the Special Judge.

(e) The prosecution has failed to discharge the initial burden of proving that the money was accepted or obtained by the appellant is gratification other than legal remuneration.

The prosecution evidence is certainly required to be assessed beyond the realm of reasonable doubt for discharging the initial burden that lies upon the prosecution, and if such evidence is not forthcoming, the appellant would be given the benefit of the same.
Therefore, the presumption under Sec. 20(1) (old sec.4(1) § of the Act, did not arise at all.\textsuperscript{93}

In absence of legal sanction for prosecution, the condition precedent for taking cognizance of a case is absent. On this ground, failure of prosecution at appellate level may arise. In Nirmalendu Biswas - v - State (Through the Delhi Special Police Establishment)\textsuperscript{94} it was held by the Gauhati High Court, that in view of issuing sanction for prosecution without authority, the Doctrine of De-facto will not be applicable in respect of the sanction order, and as such the condition precedent for taking cognizance of this case by the trial court was absent. On this ground alone, the trial and the impugned judgement and order are liable to be quashed.

\textsuperscript{93} Khembu Ram - v - State, 1972, J.R.L.J. 321; \textit{Sudam Jha.}

\textsuperscript{94} Sri Nirmalendu Biswas - v - State (Through the Delhi Special Police Establishment) 1987;
2 JLR (NOC) 5.
Political Interference:

Records on criminal justice and enforcement of law confirmed that the criminal activities of the elite receive only token punishment. Though the Constitution of India under Article 14 guaranteed to all the citizens (1) equality before the law and (2) equal protection of law, it seems extremely difficult to treat the crimes of the privileged and the crimes of the powerless equally. The overall picture is a complex one and a more detailed analysis is necessary.

In the context of political interference, one has to take into account the undue pressure that is sometimes put on the Executive Magistracy on the police or the prosecution to do or not to do certain things either during a state of unrest or at the stage of the investigation, or during the pendency of the proceedings, before the courts. The discretion to take disciplinary or legal action against a delinquent is given to the police or other officers under the law and not to any political boss or other extraneous agency. So, any direction to the police or other officials beyond the law by an extraneous agency, including the

political Executive will, apart from demoralising the officials, be clearly illegal and malafide. Law does not make any distinction between a superior or subordinate in this regard, irrespective of high or low official position, an officer is squarely held responsible for his illegal actions and neither an order of the superior nor ignorance of law, is an excuse under Sec. 76 or 79 of the Indian Penal Code. Since an officer is an agent of the law and also does not get protection of the law for carrying out an illegal order, it is he and he alone as has been (gain) by Geoffrey Marshall, what should be left free to decide as to whether he would or would not carry out the illegal order. It would be highly unjust to deny him this bare freedom when in the long run it is he who has to face the music before the bar of justice. To disobey illegal orders of superior authority whether he be a political boss or an official superior, one must have a moral courage of


high order and an indomitable will to uphold the Rule of Law.

Political pressure is the elite's most powerful weapon in its effort to corrupt the enforcement process. There is substantial question as to where to place criminal justice workers in this paradigm of influence and power. This issue can be resolved only in relation to specific objectives. Workers such as policemen in vigilance organisations, attorneys, public defenders and administrators may be seen as both victimizers and victims. They are victimizers in the sense that they directly administer the systems inequitable and unjust practices. The interplay between politics and the police often focuses exclusively upon the external influences and controls that are illegal and improper. 96

Integrity Of Officials in Trapping or Initiating Proceeding Against Delinquents:

The investigation officer is not prohibited from laying trap in investigation. He may lay

trap with decoy. By laying such trap, he cannot be said to have instigated or promoted the commission of the offence. He may submit report under sec. 173, Cr.P., both in respect of offence informed and of offence committed during investigation and such course cannot be held illegal. 99

**Success At Bureaucratic Desk:**

Using public office for private gain is a criminal process of injury to the public interest. The criminal codes emphasise the breach of law, the consequences are only additional considerations, not primary. Corruption may be defined as the acquisition of forbidden benefits by officials or employees, so bringing into question their loyalty to their employer. Study of corruption, its causes and consequences suggests that three principal factors are involved in this white collar crime. These are the salaries paid, the opportunities presented for illegal use of office and policing to mean both direction and punishment. Corruption should not be thought to be dependent only on the level of salaries, or the efficiency of policing

system or the opportunities present, but on all three together. Corruption will be most prevalent when salaries are low, opportunities great and policing weak. It will be infrequent when the reverse applies, and salaries are generous, opportunities few and policing strong. So, the success at the bureaucratic desk in curbing corruption depends on the standard of ethical behaviour of officials and other authorities and creation of an atmosphere to suppress these criminalities.

Though India has the longest history of anti-corruption work, the problem of corruption continue to carry in endemic nature. All the anti-corruption departments and agencies both of the Central government as well as of State governments have been reasonably effective in controlling corruption at certain levels. On the other hand, though corruption may have been contained, it has not been reduced even to a small extent. The weakness of policing and degradation of morality amongst administrators are the main reasons of this state of affairs. Along with removing the weaknesses of policing, a strict adherence to a high standard of ethical behaviour is required to eradicate the problem from public life. Anti-corruption work requires more than just investigation and prosecution.