

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18th DAY OF JANUARY, 2021

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.10140 OF 2020**C/W****WRIT PETITION NO.10142 OF 2020 (GM-RES)****IN W.P.NO.10140 OF 2020****BETWEEN:**

1. AZIM HASHAM PREMJI
S/O MOHD HASHAM PREMJI
R/O SURVEY NO. 75, 133, 135/1, 136/1
NO.574, DODDAKANNELLI VILLAGE
SARJAPUR ROAD,
BANGALORE
2. YASMEEN A PREMJI
W/O AZIM HASHAM PREJMI
RESIDENT OF SURVEY NO. 574
DODDAKANNELLI VILLAGE
SARJAPUR ROAD,
BANGALORE
3. PAGALTHIVARTHI SRINIVASAN
S/O SHRI. P.V. VASUDEVAN
R/O NO. 524, 16TH CROSS
INDIRANAGAR II STAGE
BANGALORE-560038

... PETITIONERS

(BY SRI.C.V.NAGESH, SR. ADV. FOR SRI. AJAY KADKOL.T,
ADVOCATE)

AND:

INDIA AWAKE FOR TRANSPARENCY
24, DESIKA ROAD, MYLAPORE
CHENNAI-600004
WHICH HAS BEEN ORDERED TO BE
REMOVED FROM THE REGISTER
OF SECTION 8 COMPANIES
MAINTAINED AT REGISTRAR
OF COMPANIES, CHENNAI

... RESPONDENT

(BY SRI. R.SUBRAMANIAN, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 3.07.2020 PASSED BY THE LVIII ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY IN CRIMINAL REVISION PETITION NO.749/2017 ON HIS FILE SETTING ASIDE THE ORDER DATED 03.07.2017 PASSED BY THE SPECIAL COURT, ECONOMIC OFFENCES, BANGALORE CITY IN PCR NO.06/2017 AND TO FURTHER, DIRECTING THE TRIAL COURT TO RESTORE PCR NO.6/2017 TO FILE AND TO ISSUE NOTICE TO THE COMPLAINANT I.E. THE RESPONDENT HEREIN BY FIXING THE DATE FOR ITS APPEARANCE AND TO PROCEED WITH THE MATTER FURTHER, WHICH ORDER IS PRODUCED AS **ANNEXURE-A;**

IN W.P.NO.10142 OF 2020**BETWEEN:**

1. AZIM HASHAM PREMJI
S/O MOHD HASHAM PREMJI
AGED ABOUT 74 YEARS
R/O SURVEY NO. 75, 133,135/1, 136/1
NO. 574, DODDAKANNELLI VILLAGE
SARJAPUR ROAD, BANGALORE-562 215
2. YASMEEN A PREMJI
W/O AZIM HASHAM PREMJI
AGED ABOUT 72 YEARS

R/O SURVEY NO. 574
DODDAKANNELLI VILLAGE
SARJAPUR ROAD, BANGALORE-562215

3. PAGALTHIVARTHI SRINIVASAN
S/O SHRI P V VASUDEVAN
AGED ABOUT 60 YEARS
RESIDENT OF NO. 524, 16TH CROSS
INDIRANGAR II STAGE
BANGALORE-560 038

... PETITIONERS

(BY SRI.C.V.NAGESH, SR. ADV. FOR SRI. AJAY KADKOL.T,
ADV.)

AND:

INDIA AWAKE FOR TRANSPARENCY
NO.24, DESIKA ROAD, MYLAPORE
CHENNAI-600 004
WHICH HAS BEEN ORDERED
TO BE REMOVED FROM THE
REGISTER OF SECTION 8 COMPANIES
MAINTAINED AT REGISTRAR
OF COMPANIES,
CHENNAI.

... RESPONDENT

(BY SRI.R.SUBRAMANIAN, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 3.07.2020 PASSED BY THE LVIII ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY IN CRIMINAL REVISION PETITION NO.750/2017 ON HIS FILE SETTING ASIDE THE ORDER DATED 03.07.2017 PASSED BY THE SPECIAL COURT, ECONOMIC OFFENCES, BANGALORE CITY IN PCR NO.12/2017 AND TO FURTHER, DIRECTING THE TRIAL COURT TO RESTORE PCR NO.12/2017 TO FILE AND TO ISSUE NOTICE TO THE COMPLAINANT I.E. THE RESPONDENT HEREIN BY FIXING THE DATE FOR ITS APPEARANCE AND TO PROCEED WITH THE

MATTER FURTHER, WHICH ORDER IS PRODUCED AS
ANNEXURE-A;

THESE WRIT PETITIONS COMING ON FOR
PRELIMINARY HEARING IN B-GROUP AND HAVING BEEN
HEARD AND RESERVED FOR ORDERS ON 22.12.2020,
THIS DAY, **THROUGH VIDEO CONFERENCE**, THE COURT
PRONOUNCED THE FOLLOWING:

ORDER

WP.10140/2020:

1. The petitioners in W.P.No.10140/2020 are before
this Court seeking for the following reliefs:

a) *Issue an order, direction or writ in the nature of certiorari or any other appropriate writ or order setting aside the order dated 3.07.2020 passed by the LVIII Addl. City civil and Sessions Judge, Bangalore city in Criminal Revision Petition No.749/2017 on his file setting aside the order dated 03.07.2017 passed by the Special Court, Economic Offences, Bangalore city in PCR No.06/2017 and to further, directing the trial Court to restore PCR No.6/2017 to file and to issue notice to the complainant i.e. the respondent herein by fixing the date for its appearance and to proceed with the matter further, which order is produced as*
ANNEXURE-A;

b) *Issue such other writ, order or direction as deemed fit in the circumstances of the case, in the interest of justice and equity.*

2. The petitioners in W.P.No.10142/2020 are before this Court seeking for the following reliefs:

- a) *Issue an order, direction or writ in the nature of certiorari or any other appropriate writ or order setting aside the order dated 3.07.2020 passed by the LVIII Addl. City civil and Sessions Judge, Bangalore City in Criminal Revision Petition No.750/2017 on his file setting aside the order dated 03.07.2017 passed by the Special Court, Economic Offences, Bangalore city in PCR No.12/2017 and to further, directing the trial Court to restore PCR No.12/2017 to file and to issue notice to the complainant i.e. the respondent herein by fixing the date for its appearance and to proceed with the matter further, which order is produced as*
ANNEXURE-A;

- b) *Issue such other writ, order or direction as deemed fit in the circumstances of the case, in the interest of justice and equity.*

3. **FACTS:**

W.P.No.10140/2020:

- 3.1. Petitioner No.1 is stated to be an Indian business tycoon, engineer and a philanthropist, who devoted his entire life in engineering the IT Industry of the country and having

established one of the premium IT companies viz., WIPRO Limited.

3.2. Petitioner No.1 has set up Azim Premji Foundation, a not-for-profit organisation with a vision of enhancing quality and equity in the public school education system.

3.3. Petitioner No.2 is the wife of petitioner No.1 and is a Director of Azim Premji foundation and sits on the Board of Governors of the Azim Premji University.

3.4. Petitioner No.3 is the Global Tax Head of Wipro Limited.

3.5. The respondent filed a private complaint in PCR No. 6/2017 against the Petitioners before the Special Court for Economic offences, Bangalore city alleging violation of Section 447 of the Companies Act, 2013 (Act of 2013). In the said complaint, the respondent who claims to

be public spirited or pro bono publico, has alleged that while the petitioners were functioning as Directors of M/s Vidya Investment & Trading Company Limited [VITC], in the report filed by them before the Registrar of Companies they have not chosen to give correct information for one reason or the other to the Registrar of Companies.

3.6. It is alleged that Director's report in terms of Section 217 of the Companies Act of 1956 did not make disclosure of several facts relevant to operation of VITC, more so, as regards the fact that such company has become a subsidiary of another company viz., Hasham Investment & Trading Company Pvt. Limited [Hasham], VITC's subsidiary Prazim Trading Investment Company Limited was carrying on non-banking financial business, is not registered with the

RBI, there was no compliance with RBI Regulations, etc.

3.7. In view thereof it is alleged that the omission of material facts in the directors' report by the petitioners was an offence under Section 447 of the Act of 2013 punishable under Section 448 of Act of 2013 and in this regard, prosecution was sought to be initiated against the petitioners.

W.P.No.10142/2020:

3.8. Petitioners in these petitions are the same as in WP No. 10140 of 2020.

3.9. The respondent filed a private complaint in PCR No. 12/2017 against the Petitioners before the Special Court for Economic offences, Bangalore alleging that petitioners are required to be prosecuted under Section 447 of the Companies Act for offences under Section 409

r/w 120-B of the IPC on the ground that petitioners No.1 to 3 were directors in Vidya Investment and Trading company Pvt. Ltd. (VITC), Regal Investment and Trading Company Pvt. Ltd. (Regal) and Napean Trading and Investment Company Pvt. Ltd. (Napean).

3.10. It is alleged that in the said three companies, there is no other shareholder other than the three companies themselves which were holding equity shares of the said companies, each of the companies holding shares in the other. Since all the shares in the companies were owned by the companies themselves, there is no other owner of the said companies and when they were wound up, there being no shareholder, the entire assets of the said companies had to vest in the state. However, the accused conspiring with each other committed fraud to take over the assets of the

three companies which together had a net worth of Rs.40,000/- crores. It is alleged that the petitioners had taken away Rs.12,000/- crores of assets of the three companies by way of gifts made by the companies directly or indirectly to a private trust controlled by accused Nos.1 and 2. The accused have conspired to misappropriate the entire assets of the said three companies. The entire assets have been transferred to Hasham who had no equity investment in the said three companies, thereby it is alleged that an offence of fraud has been committed within the purview of Section 447 of Act of 2013.

3.11. The said transfer of assets has been got obtained through a merger sanctioned by this Court in C.P.No.182-184/2014 along with C.P.No.181/2014. The said merger is a fraud committed. The merger was facilitated by

accused No.1 to 3. The complainant has challenged the said merger before the Company Court for recalling of the merger. The accused being no longer directors of the said three companies and the said three companies having been wound up, the accused are not persons covered under Section 2(59) of the Act of 2013 and therefore, the restrictions under Section 439(2) of the Act of 2013 is not attracted and as such, sought for action to be initiated against the petitioners herein for the aforesaid offences.

ORDERS IN PCR No.6/2017 and PCR No.12/2017

3.12. On the above private complaints in **PCR No.6/2017 and PCR No.12/2017** being filed, the same was heard and the Special Economic Offences Court, Bangalore vide its separate orders dated 3.7.2017 dismissed the

said complaints on the ground that the complainant therein did not fulfill the requirements of Section 439(2) of the Act of 2013. The said Section 439(2) is reproduced hereunder for easy reference:

"439. Offences to be non-cognizable.—

(1) xxxx

(2) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf:

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India:

Provided further that nothing in this subsection shall apply to a prosecution by a company of any of its officers."

3.13. The court held that the complainant was neither the Registrar of companies nor a shareholder of the company or a person authorized by the Central Government to file the complaint, and on that ground dismissed the complaint.

Crl.Revision Petitions No.749/2017 and 750/2017

3.14. Aggrieved by the orders passed in aforesaid PCR Nos.6/2017 and 7/2017, the complainant filed Crl.Revision Petitions No.749/2017 and 750/2017, respectively before the 58th Addl. City Civil and Sessions Judge, Bangalore which came to be disposed by separate orders dated **3.7.2020** allowing the said Revision Petitions. While doing so the revisional court held that the accused, the petitioners herein do not come within the definition of Officer defined under Section 2(59) of the Companies Act.

Hence, the bar to take cognizance under Section 439(2) of Companies Act was not applicable and therefore, held that the order dated 3.07.2017 passed by the Special Court for Economic Offences was bad in law and set it aside with a direction to restore PCR No.6/2017 and PCR No. 12/2017 and to proceed with the matter.

4. It is aggrieved by the said orders dated 3.7.2020, the petitioners are before this Court.
5. On service of notice, the respondent has filed its statement of objections on 3.10.2020 in both matters. In the statement of objections, it is contended that:
 - 5.1. There are serious allegations made against the petitioners as regards siphoning of 31,342 crores.

5.2. There is no bar under Section 439(2) of Act of 2013 to take action against the former officers of the Companies like the petitioners.

5.3. Section 439(2) of Act of 2013 is similar to Section 19 of the Prevention of Corruption Act ("**PC Act**").

5.4. The order of the Revisional Court is proper and correct. The Revisional court has considered all factors in a proper and required manner.

5.5. The offences alleged against the petitioners are required to be investigated and therefore, it is contended that this court ought not to intercede or quash the proceedings.

6. Upon filing of the said objections, the petitioners have filed a rejoinder to the said objections contending that:

6.1. The entire criminal proceedings which had been initiated is due to personal vendetta, the respondent is a non-existent entity and is impersonating as a company under Section 8 of the Act of 2013 before the court.

6.2. The respondent is acting at the behest of one Sri.R.Subramanian against whom there are several criminal proceedings as also several disputes between him and the petitioners.

6.3. That the petitioners continued to be directors of VITC until its amalgamation with Hasham and have further continued to be directors of the amalgamated company even as on today. Therefore, it is contended that the allegations made by the respondent that they are no longer directors of VITC is false statement. In this regard they have produced extract maintained by the Registrar of Companies

showing that they are continuing to be functioning as directors.

6.4. The respondent which was incorporated under Section 8 of the Act of 2013 is no longer a Section 8 company and the permission/licence granted to the said company has been withdrawn by an order of the Regional Director, Southern Region, Ministry of Corporate Affairs on 17.8.2018. The said Regional Director has cancelled the licence directing the respondent not to use the word 'private limited', hence the respondent can no longer claim to be a Section 8 company, it ought to use the words Private Limited in its name.

6.5. The said order continues to be in operation though challenged by respondent.

6.6. The directors of respondent are disqualified to be directors under Section 164(2) of the Companies Act and as such, they could not have filed the present complaint.

6.7. There are disputes between one Mr.R.Subramanian and Hasham Trading as regards the investment made by the petitioner Group in Companies belonging to said Sri.R.Subramanian. There is a proceeding filed against the said Sri.R.Subramanian and Subhiksha Trading Services Limited of which he is a director for dishonor of cheques, as also several other proceedings had been filed by the petitioner group, it is due to the same that the said R.Subramanian has sought to wreck vengeance on the petitioner group and has been filing one false complaint after another.

6.8. Several allegations have been made against the said R.Subramanian and his involvement in

several offences which may not be germane to the present fact situation.

7. On the filing of the rejoinder, respondent has filed an application under Order VI Rule 16 of CPC to strike out the pleadings and documents produced by the petitioners in the rejoinder. In the said application, it is contended that:

7.1. The only question which is relevant to the matter is the scope of the bar of cognizance imposed under Section 439(2) of the Act of 2013,

7.2. The averments and allegations made in the rejoinder are only to browbeat the respondent. The averments made in rejoinder are not germane to the matter.

7.3. The conduct of the counsel of parties and proceedings faced by them is not relevant to

the matter. For this reason it is stated that every pleading related to the counsel for the complainant i.e. respondent needs to be deleted.

7.4. It is stated that the orders passed by the Madras High Court are behind the back of Sri.R.Subramanian and as such they are not binding, could be ignored by such a party as if the order is void and in that background respondent has sought for deletion of paragraph 10, 17 to 27 of the rejoinder in their entirety, as also the documents produced viz., Annexures-P2, P6, P8, 10, 11, 13-18 to be eschewed by stating that there is no nexus to the present fact situation.

8. The above matter was heard on merits as also on the said application. Both the counsels submitted that a common order could be passed on the main as also on the application under Order VI Rule 16 CPC.

9. During the course of arguments Sri.C.V.Nagesh, learned Senior counsel appearing for the Petitioners submitted that;

9.1. Order dated 17.8.2018 under section 8(6) of Act of 2013 had been passed at the behest of Hasham which is one of the group companies of the petitioners. The said proceeding being between Hasham and respondent herein are relevant for this matter inasmuch as they establish the prior litigation between the parties.

9.2. By referring to the said order, it is stated that the respondent who is the director of Subhiksha Trading Services Limited and its various group companies totaling upto 49 companies, had siphoned off huge amounts of money by cheating farmers and or vendors.

9.3. There are various proceedings under Section 138 of Negotiable Instruments Act against various companies of Subhiksha group, as also against Sri.R.Subramanian.

9.4. M/s Zash Investment and Trading company, which is part of petitioner's group, holding 10% equity shares in Subhiksha Trading Services limited had raised objections to the amalgamation of said Subhiksha trading Services Limited with Blue Green constructions and Investments Limited and on the matter coming up before the Madras High Court, Madras High Court held that the Scheme of amalgamation is not just, fair or reasonable.

9.5. In view of the said proceedings initiated by Zash, various proceedings were commenced between the petitioner group and the group of Sri.R.Subramanian.

9.6. After going through all these factors and taking into consideration that there are serious allegations against Subhiksha group and said Sri.R.Subramanian, who is representing and or a part of the respondent, as also taking into consideration none of the objects of the respondent have been satisfied though a period of six years had been elapsed from the date of incorporation, the licence dated 22.6.2012 issued by the Registrar of Companies to the respondent was revoked.

9.7. The said respondent has been filing numerous matters against the petitioner and their group of companies making false allegations.

9.8. The respondent company was represented by its authorized signatory Sri.R.Subramanian in the Company Application filed in Co.P.No.182/2014 against the petitioners and others.

9.9. The entire litigation which has been initiated including the private complaint is to wreck vendetta on the petitioners and their group of companies. There are no bonafides in the same.

9.10. Though any person can initiate criminal proceedings it would be required to ascertain in a proceedings under Section 482 of Cr.P.C that if such initiation of criminal proceedings is bonafide or malafide. In the present case, the same being malafide, the proceedings are required to be quashed. There is enough and more material to establish the past litigation between the petitioner group and the said R.Subramanian, who is now representing the respondent in various capacities, initially as authorized signatory and now as counsel of the respondent.

9.11. On merits it is contended that Section 439(2) of Cr.P.C. lays down the qualification/ identity of the complainant in a proceeding to be initiated thereunder, whereas under Section 19 of the Prevention of Corruption Act, there are positive directions issued requiring sanction from the competent authority before initiation of proceedings. Therefore, it is submitted that the finding of the Revisional court that Section 19 of the Prevention of Corruption Act and Section 439 of Act of 2013 are similar to each other and those principles would apply to each other is completely misconceived and misreading of the law.

9.12. The petitioner himself has filed a petition before the High Court of Judicature at Delhi challenging the vires of Section 439(2) of the Act of 2013 wherein it is clearly stated by the respondent itself is as under:

" 22. The petitioner states that wholly contrary to the provisions set out above recognising that in matters of public interest there would be no concept of locus and that there are multiple stakeholders even apart from shareholders and that as in criminal law any matter of violation, serious albeit, can be raised by any one even without nexus to the matter in issue, the provisions of Sec.439(2) of the Act bar a complaint for prosecution of a offence under the Act committed by a company or a Director or officer thereof from being filed with the Competent Court by any person other than a shareholder of course apart from persons of the Respondent themselves.

53. Being concerned by the arbitrary stipulation under provisions of Sec 439(2) of the Act barring non shareholders from prosecuting offences for violation of the Act, such stipulation being unreasonable and arbitrary and in violation of the fundamental rights guaranteed under the constitution including under Article 14, the Petitioner seeks to challenge the vires of the provisions of Sec 439(2) of the Act and have them declared illegal and void and ultra vires in respect of offences arising out violations of the Act on the following amongst other grounds which are taken in the alternative and without prejudice to one another."

And the prayer sought for therein is as under:

- (a) Issue a writ of declaration that the provision of Section 439(2) of the Companies Act 2013 barring courts of law from taking cognisance of any complaint in respect of the Act from persons other than shareholders is unconstitutional oppressive excessive illegal and ultra vires and hence void.*
- (b) Issue rule nisi in terms of prayers (a) above;*
- (c) pass such other and further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

9.13. Relying on the above, it is submitted that the respondent itself having challenged the requirements of Section 439(2) before the High Court of Judicature of Delhi cannot be permitted to argue contrary to what is stated in the said writ petition filed by the respondent.

9.14. On the above ground he submits that the order passed by the Special Court for Economic Offences dated 3.7.2017 is proper and correct.

The order passed by the Revisional court dated 3.7.2020 is a misreading of the law and as such, the said order is required to be set-aside and the petition to be allowed.

10. Per contra Sri. R.Subramanian, learned counsel for respondent would submit that:

10.1. the observations made in the order dated 17.08.2018 by the Regional Director, Ministry of Corporate Affairs are not relevant for these proceedings.

10.2. He had represented the respondent as its authorized signatory only due to exigency and apart from the said representation made in the Company Application, he has not represented the respondent as authorized signatory or Power of attorney or Director in any other proceeding,

10.3. He has only represented respondent as a counsel in several proceedings, the disputes between himself and the petitioner group cannot be extended to disputes between the petitioner and respondent, the orders produced by the petitioner as regards the rejection of bail are not relevant for this proceedings, so also the photographs and newspaper relating to his arrest.

10.4. The proceeding between Hasham and Subhiksha have nothing to do with the present proceedings inasmuch as these are independent proceedings which have been initiated by the respondent against the petitioners for offences under the Companies Act. In this regard, he relies upon the following decisions:

10.5. ***R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183 [para 19]***

"19. Section 6 bars the court from taking cognizance of the offences therein enumerated alleged to have been committed by a public servant except with the previous sanction of the competent authority empowered to grant the requisite sanction. Section 8 of 1952 Act prescribes procedure and powers of Special Judge empowered to try offences set out in Section 6 of 1947 Act. Construction of Section 8 has been a subject to vigorous debate in the cognate appeal. In this appeal we will proceed on the assumption that a Special Judge can take cognizance of offences he is competent to try on a private complaint. Section 6 creates a bar to the court from taking cognizance of offences therein enumerated except with the previous sanction of the authority set out in clauses (a), (b) and (c) of sub-section (1). The object underlying such provision was to save the public servant from the harassment of frivolous or unsubstantiated allegations. The policy underlying Section 6 and similar sections, is that there should not be unnecessary harassment of public servant. (See C.R. Bansi v. State of Maharashtra [(1970) 3 SCC 537 : 1971 SCC (Cri) 143 : AIR 1971 SC 786 : (1971) 3 SCR 236] .) Existence thus of a valid sanction is a prerequisite to the taking of cognizance of the enumerated offences alleged to have been committed by a public servant. The bar is to the taking of cognizance of offence by the court. Therefore, when the court is called upon to take cognizance of such offences, it must enquire whether there is a valid sanction to prosecute the public servant for the offence alleged to have been committed by him as public servant. Undoubtedly, the accused must be a public servant when he is alleged to have committed the offence of which he is accused because Sections 161, 164, 165 IPC and Section 5(2) of the 1947 Act clearly spell out that the offences therein defined can be

committed by a public servant. If it is contemplated to prosecute public servant who has committed such offences, when the court is called upon to take cognizance of the offence, a sanction ought to be available otherwise the court would have no jurisdiction to take cognizance of the offence. A trial without a valid sanction where one is necessary under Section 6 has been held to be a trial without jurisdiction by the court. (See R.R. Chari v. State of U.P. [AIR 1962 SC 1573 : (1963) 1 SCR 121 : (1962) 2 Cri LJ 510] and S.N. Bose v. State of Bihar [AIR 1968 SC 1292 : (1968) 3 SCR 563 : 1968 Cri LJ 1484] .) In Mohd. Iqbal Ahmad v. State of A.P. [(1979) 4 SCC 172 : 1979 SCC (Cri) 926 : AIR 1979 SC 677 : (1979) 2 SCR 1007] it was held that a trial without a sanction renders the proceedings ab initio void. But the terminus a quo for a valid sanction is the time when the court is called upon to take cognizance of the offence. If therefore, when the offence is alleged to have been committed, the accused was a public servant but by the time the court is called upon to take cognizance of the offence committed by him as public servant, he has ceased to be a public servant, no sanction would be necessary for taking cognizance of the offence against him. This approach is in accord with the policy underlying Section 6 in that a public servant is not to be exposed to harassment of a frivolous or speculative prosecution. If he has ceased to be a public servant in the meantime, this vital consideration ceases to exist. As a necessary corollary, if the accused has ceased to be a public servant at the time when the court is called upon to take cognizance of the offence alleged to have been committed by him as public servant, Section 6 is not attracted. This aspect is no more res integra. In S.A. Venkataraman v. State [AIR 1958 SC 107,

112 : (1958) SCR 1040 : 1958 Cri LJ 254] this Court held as under:

"In our opinion, in giving effect to the ordinary meaning of the words used in Section 6 of the Act, the conclusion is inevitable that at the time a court is asked to take cognizance not only the offence must have been committed by a public servant but the person accused is still a public servant removable from his office by a competent authority before the provisions of Section 6 can apply. In the present appeals, admittedly, the appellants had ceased to be public servants at the time the court took cognizance of the offences alleged to have been committed by them as public servants. Accordingly, the provisions of Section 6 of the Act did not apply and the prosecution against them was not vitiated by the lack of a previous sanction by a competent authority."

And this view has been consistently followed in C.R. Bansi case [(1970) 3 SCC 537 : 1971 SCC (Cri) 143 : AIR 1971 SC 786 : (1971) 3 SCR 236] and K.S. Dharmadatan v. Central Government [(1979) 4 SCC 204 : 1979 SCC (Cri) 958 : (1979) 3 SCR 832 : 1979 Cri LJ 1127] . It therefore appears well-settled that the relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by a public servant as required by Section 6 is the date on which the court is called upon to take cognizance of the offence of which he is accused.

**10.6. Kalicharan Mahapatra v. State of Orissa,
(1998) 6 SCC 411 [para 7 and 14]**

7. There is no indication anywhere in the above provisions that an offence committed by a public servant under the Act would vanish off from penal liability at the moment he demits his office as public servant. His being a public servant is necessary when he commits the offence in order to make him liable under the Act. He cannot commit any such offence after he demits his office. If the interpretation now sought to be placed by the appellant is accepted, it would lead to the absurd position that any public servant could commit the offences under the Act soon before retiring or demitting his office and thus avert any prosecution for it or that when a public servant is prosecuted for an offence under the Act, he can secure an escape by protracting the trial till the date of superannuation.

14. The result of the above discussion is thus: A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 19 of the Act if he continues to be a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time, the court can take cognizance of the offence without any such sanction. In other words, the public servant who committed the offence while he was a public servant, is liable to be prosecuted whether he continues in office or not at the time of trial or during the pendency of the prosecution."

10.7. **C.R. Bansi v. State of Maharashtra, (1970)
3 SCC 537 [PARA 8 AND 9]**

"8. We agree with the conclusion of the learned Special Judge. Section 6 of the Act reads as follows:

"Previous sanction necessary for prosecution

(1) No court shall take cognizance of an offence punishable under Section 161 or Section 164 or Section 165 of the Penal Code, 1860, or under sub-section (2) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction,

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of the Central Government;

(b) in the case of a person who is employed in connection with the affairs of a State. and is not removable from the office save by or with the sanction of the State Government, of the State Government;

(e) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises whether the previous

sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

9. It seems to us that the person must be employed in connection with the affairs of the Union in sub-clause (a) and with the affairs of the State in sub-clause (b). The case of the appellant would be covered in sub-clause (a) because he had been employed in connection with the affairs of the Union. But the sub-section contemplates that the person must be employed in connection with the affairs of the Union and not that he was employed with the affairs of the Union. The policy underlying Section 6 and similar sections, is that there should not be unnecessary harassment of public servants. But if a person ceases to be a public servant the question of harassment does not arise. The fact that an appeal is pending does not make him a public servant. The appellant ceased to be a public servant when the order of dismissal was passed. There is no force in the contention of the learned counsel and the trial cannot be held to be bad for lack of sanction under Section 6 of the Act".

10.8. ***K.S. Dharmadatan v. Central Govt., (1979)***
4 SCC 204 [para 5]

5. A perusal of this section would clearly disclose that the section applies only where at the time when the offence was committed the

offender was acting as a public servant. If the offender had ceased to be a public servant then Section 6 would have no application at all. Furthermore, it is also manifest from the perusal of Section 6 that the point of time when the sanction has to be taken must be the time when the court takes cognizance of an offence and not before or after. If at the relevant time, as indicated above, the offender was not a public servant no sanction under Section 6 was necessary at all.

10.9. On the basis of the above submissions he contends that the requirements of Section 439(2) being similar to that of Section 19(1) of the Prevention of Corruption Act, the order passed by the Revisional Court is proper and correct and does not require any interference.

11. Heard Sri.C.V.Nagesh, learned Senior counsel instructed by Sri.Ajay Kadkol, learned counsel for the petitioners, Sri. R.Subramanian, learned counsel for respondent. Perused papers.

12. The points that would arise for determination by this Court are:

- i) **Whether the application in IA No.2/2020 under Order VI Rule 16 of CPC is required to be allowed?**
- ii) **Whether Section 439(2) of Act of 2013 and Section 19(1) of Prevention of Corruption Act are in *pari materia* with each other?**
- iii) **Whether any person can file a proceedings against the directors of a company and/or the company under Section 439(2) of the Act of 2013?**
- iv) **Whether the order of Revisional court dated 3.07.2020 requires any interference?**
- v) **What order ?**

13. **ANSWER TO POINT NO.1: Whether the application in IA No.2/2020 under Order VI Rule 16 of CPC is required to be allowed ?**

13.1. The application under Order VI Rule 16 of CPC has been filed for striking out pleadings.

Though strictly those provisions would not apply to a writ petition and the pleadings filed are to be considered in terms of the Writ Rules applicable thereto since the issue has been raised, the same is being answered.

13.2. In the said application, the respondent has raised the contention as above indicating that the contents of the rejoinder are unnecessary for the matter, the said averments have been made only to prejudice this Court, to brow beat the counsel for the respondent and also to defame the counsel appearing for the respondent. Apart therefrom there are various allegations made in the said application against the counsel for the petitioner.

13.3. It is rather sad that there are allegations made as regards the Senior Counsel who is appearing in the matter. From the documents produced along with the petition and rejoinder

it is seen that the Respondent is given to making allegations against whosoever appears against the respondent and /or passes an order against the Respondent. The Respondent has infact filed a criminal complaint against the officer who passed the orders under Section 8 of the Act of 2013, which was against the respondent.

13.4. Virtually the entire rejoinder viz., para 10, 17 to 37 are sought to be deleted and almost all the documents produced along with the rejoinder are requested to be ignored. The rejoinder consists of 37 paragraphs. In the said rejoinder, the prior litigation between the petitioner group and the representative of the respondent, both as authorized signatory as also a counsel have been detailed. The fact of the litigation between the petitioner group and respondent has also been detailed.

13.5. Para 10 of the rejoinder deals with current status of the shareholders of the respondent company. It cannot therefore be said that the same is not relevant to these proceedings.

13.6. Para 17 to 37 deal with the order of the Regional Director passed in a proceeding between one of the group companies of the petitioner and the respondent, the observations made by the Regional Director in the said proceedings, as also the nexus between Sri.R.Subramanian and the respondent company.

13.7. There are certain averments made as regards the proceedings against the said Sri.R.Subramanian under the Prevention of Money Laundering Act, Tamil Nadu Protection of Interest of Depositors Act, RBI Act, SEBI Act, proceedings filed by individual investors,

photographs of said Sri.R.Subramanian when he was arrested, the proceedings between Hasham and Subhiksha as regards dishonor of cheques, etc.

13.8. The documents which have been produced by the petitioner in the rejoinder are public documents and the averments made in the rejoinder are based on those public documents.

13.9. Though certain imputations are sought to be drawn on the basis of the averments and documents, I am of the considered opinion that there is no particular statement made in the rejoinder which can be said to be unnecessary, scandalous, frivolous or vexatious or that that it may prejudice, or delay the fair trial of the matter or is an abuse of process of the Court.

13.10. As observed earlier, the contents of the rejoinder are relating to the proceedings between either petitioner group or respondents or between the petitioner group and the representative of the respondent. Therefore, they cannot be said to be unnecessary.

13.11. The documents produced are public documents and the averments made are on the basis of such public documents. Therefore, they cannot be said to be scandalous.

13.12. The averments made and the documents produced are related directly or indirectly the present proceedings, therefore, they cannot be said to be frivolous or vexatious.

13.13. The averments made and the documents produced therein cannot be said to prejudice or delay the matter inasmuch as the above petition having been filed on 4.08.2020, the

respondent having entered appearance and filed its objections on 3.10.2020, the above matter was taken up on 20.11.2020, 2.12.2020, 14.12.2020, 17.12.2020, 18.12.2020, when it did not reach on account of paucity of time, it was however taken up for hearing on 22.12.2020 at the request of both the counsels. Thus, there cannot be said to be any delay on account of the rejoinder the matter was taken up for final disposal at the request of both the counsels on 22.12.2020, the rejoinder having been filed on 11.12.2020.

13.14. The contents of the rejoinder may be said to cause embarrassment to the respondent, but that cannot be the only reason for striking out of pleadings as also documents.

13.15. Further I am of the considered view that the filing of the rejoinder and production of

documents would not cause any abuse of process of the court.

13.16. The averments made and the documents produced are in reply to the detailed objections filed by the respondents and these averments and documents would be required to be considered by this Court.

13.17. **In view thereof I answer Point No.1 by holding that the application in IA No.2/2020 under Order VI Rule 16 of CPC is required to be dismissed and is so dismissed.**

14. **POINT NO.2: Whether Section 439(2) of Act of 2013 and Section 19(1) of Prevention of Corruption Act are in *pari materia* with each other?**

14.1. Section 19 of the Prevention of Corruption Act

is reproduced hereunder for easy reference:

"19. Previous sanction necessary for prosecution.—

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

14.2. *Section 439 of Companies Act is reproduced*

herein for easy reference:

"439. Offences to be non-cognizable.—

(1) Notwithstanding anything in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

(2) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf:

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India:

Provided further that nothing in this sub-section shall apply to a prosecution by a company of any of its officers."

14.3. The contention of Sri.R.Subramanian is that

both the above provisions are *in pari materia* with each other. In that before initiating proceeding under Section 19 of PC Act, prior

sanction has to be obtained from the concerned Authority and under Section 439(2), no proceedings can be initiated against a Company or its officer otherwise than a person authorised under the said Section.

14.4. Sri.R.Subramanian, learned counsel has sought to equate prior sanction under Section 19 of Prevention of Corruption Act with authorised person under Section 439 of the Act of 2013. In this regard, he has relied upon the decision of the Hon'ble Apex Court in **Antulay's case**. There cannot be any dispute as regards the principles laid down by the Apex Court in Antulay's case as also in the other citations relied upon by Sri.R.Subramanian.

14.5. The requirement of prior sanction under the Prevention of Corruption Act is to protect an officer against unnecessary prosecution during

the time that he was discharging his function as an officer of the State, in such situation it is mandated that prior sanction from the concerned authority has to be obtained which authority would apply its mind to the facts and come to a conclusion as to whether the proceedings are to be initiated or not.

14.6. The same in my opinion cannot be equated to authorised person under Section 439. There is a specific prohibition to the Court to take cognizance except upon a complaint in writing by the registrar, a shareholder of the company or a person authorised by the Central Government in that behalf.

14.7. Admittedly, the respondent is neither the Registrar nor a shareholder nor has he obtained any authorisation from the Central Government. Therefore, the respondent would

not in my considered opinion have any locus to initiate penal proceedings under Section 439 of the Act of 2013 or even if he initiates any action, the court dealing with such a matter cannot take cognizance of such a complaint.

14.8. I Answer Point No.2 by holding that Act of 2013 being a Special enactment containing a specific embargo, the embargo is required to be given complete effect to by this Court. This Court cannot travel beyond the intention of the legislature and water down the requirements of Section 439. In view thereof, I am of the considered opinion that the finding of the Special Economic Court in its order dated 3.7.2017 was proper and correct. Section 19 of the Prevention of Corruption Act and Section

439 of Act of 2013 are not *pari materia* with each other.

15. **ANSWER TO POINT NO.3: Whether any person can file a proceeding against the directors of a company and/or the company under Section 439(2) of the Act of 2013 ?**

15.1. In view of the above finding in respect of point No.2, it is but required that to initiate proceeding under Section 439(2) and/or if before the Court taking cognizance such matter arises than the court can take cognisance only on a complaint in writing by the Registrar or shareholder of the company or a person authorised by the Central Government in that behalf.

15.2. **I answer Point No. 3 by holding that apart from the named persons a complaint can also be filed by a person authorised by Securities and Exchange Board of India in terms of the proviso (1) of Section 439(2) or the Official Liquidator in terms of Section 439(4), no other person can initiate any criminal proceeding against a**

company for the offence committed under the Act of 2013.

16. **POINT No. IV: Whether the order of Revisional court d 3.07.2020 require any interference ?**

16.1. In view of the discussion and finding as regards point Nos.2 and 3, the issue is not whether the accused would come under the definition of 'Officer' under Section 2(59) of the Act of 2013 which is required to be considered, what is required to be considered under Section 439(2) is the qualification of the complainant. It is for the complainant to satisfy the said qualification for him to maintain a complaint on which basis the Magistrate can take cognisance. If the complaints were to be filed by persons other than those specified under Section 439(2) of Act of 2013, the Magistrate is prohibited from taking cognisance.

16.2. It is reiterated that it is not the qualification of the accused or the designation of the accused or status of the accused which is of relevance under Section 439(2) of the Act of 2013. Therefore, it is not relevant to consider whether the accused were directors or continue to be the directors as on the date of filing of the complaint. The Revisional Court completely misdirected itself in this regard by advertng to the qualification of the accused rather than the qualification of the complainant.

16.3. **In view thereof, I am of the considered opinion that the order of the Revisional Court dated 3.07.2020 in both the Crl.Revision Petitions No.749/2017 and 750/2017 are required to be set-aside and they are set-aside.**

17. **POINT No.V: WHAT ORDER?**

17.1. In the result, the orders dated 3.7.2020 passed by the LVIII Addl. City Civil and Sessions Judge, Bangalore city in Criminal Revision Petition Nos.749/2017 and 750/2017 are hereby set-aside.

17.2. Orders dated 3.7.2017 passed in PCR Nos.6/2017 and PCR No.7/2017 are confirmed.

17.3. The complaints in PCR Nos.6/2017 and PCR No.7/2017 are dismissed.

17.4. Petitions are **allowed**.

**Sd/-
JUDGE**

In