

**ARREST OF PUBLIC SERVANTS IN**  
**CBI CASES**

# DEFINITION OF PUBLIC SERVANTS

- Bribery and Corruption amongst public servants was defined originally in the IPC.
- Inadequacy of law felt; Prevention of Corruption Act, 1947 enacted.
- Definition of public servant provided U/S 2 of the PC Act, 1947 to mean, "as defined under section 21 of IPC."
- The Amending Act of 1988 enlarged the definition of 'Public Servant' to include performance of 'public duty'.

➤ **Section 2 (c) (viii) :-**

Any person who holds an office by virtue of which he is authorized or required to perform any public duty

➤ **“Public duty”** is defined in section 2 (b):-

“Public duty” means a duty in the discharge of which the State, the public or the community at large has an interest.

Strengthened certain provisions such as :-

- Provision for day to day trial,
- Prohibitory provisions with regard to stay of proceedings,
- Prohibitory provisions with regard to exercise of power of revision against interlocutory order, etc.

# S.6A, Delhi Special Police Establishment Act, 1946

**Dr. Subramanian Swamy V Director CBI 2014 AIR SC  
2140**

- Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences.

# Manjeet Singh Khera V/s State of Maharashtra (2013) 9 SCC 276

- Supreme Court acknowledges right of the Agency not to disclose identity of the Complainant and contents of the complaint.
- Accused persons not prejudiced by such non-disclosure .
- If the names of the persons, as well as the copy of the complaint sent by them are disclosed, that may cause embarrassment to them and sometimes threat to their life.
- The complaint only triggered an enquiry.

# ARREST

- The term is Anglo-Norman in origin and is related to the French word *arrêt*, meaning "stop".
- An **arrest** is the act of depriving a person of their liberty usually in relation to the purported investigation or prevention of crime and presenting (the arrestee) to a procedure as part of the criminal justice system.

# Joginder kumar vs state of UP and Ors

## 1994 (4) SCC 260

- Existence of power of arrest and justification for exercise of arrest are two different things
- Law of arrest is one of balancing individual rights, liberties and privileges on one hand and individual duties, obligations and responsibilities on the other hand
- Protection should be provided of individual from oppression and abuse by the police and other enforcement agencies



# GROUNDS FOR ARREST

- To prevent further offence
- For proper investigation
- To prevent tampering with evidence in any manner
- Influencing witnesses\*
- Flight risk

# CIRCUMSTANCES UNDER WHICH ARREST COULD BE MADE

- Credible information / Source Information
- Accused of cognizable offence punishable with greater than seven years or with death sentence
- Proclaimed Offender
- Possession of suspected stolen property and suspected to be obtained in the offence
- Obstruction of justice\*

# PROCEDURE OF ARREST AND DUTIES OF OFFICER MAKING ARREST

- Bear accurate name which would be visible and clear identification
- Prepare a memorandum of arrest
  - Attested by atleast one witness, who is a member of the family of the person arrested or member of the locality
  - Countersigned by the person arrested
- Person arrested to be informed that he has a right to have a relative or friend named by him to be informed of his arrest

# CIRCUMSTANCES FOR ARREST OF PUBLIC SERVANTS IN CBI CASES (Per CBI Manual)

- Necessary in the interest of investigation
- Prevent the accused from absconding
- After decision taken to launch prosecution and necessary sanction for it has been obtained
- IO should obtain concurrence of the SP before making arrest
- IO and SP should take utmost care and discretion in deciding arrest
  - Satisfy the requirements of law

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- Proper steps to be taken especially where the person is on operational duty
- Timely information of intention to arrest may be conveyed to immediate superior
- If arrest cannot be postponed for exceptional reason, inform superior immediately after making arrest
- Report to be sent to HO detailing the reason for affecting arrest

# Serious Consequences

- When placed under arrest, suspension is automatic.
- Employee reduced to subsistence allowance.
- Economic death - in certain cases
- Traumatic - adverse consequences at the place of work and in Society.
- In case of prolonged trial\*

# CHECKS AND BALANCES

Certain checks to protect officers from frivolous prosecution / investigation:-

- Section 17 - who can arrest / investigate?
- Section 19 - sanction for prosecution

# State Inspector of Police v/s Surya Sankaram Karri (2006) 7 SCC 172

- **Section 17** provides for investigation by a person authorized in this behalf with a *non-obstante* clause.
- It makes investigation only by police officer of the ranks specified therein to be imperative in character. Authorization by a Superintendent of Police in favour of an officer is a statutory one.
- Uses the expression "shall". Ex-facie mandatory in character.
- The burden, undoubtedly, was on the prosecution to prove the same.



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- When a statutory functionary passes an order, that too authorizing a person to carry out a public function like investigation into an offence, an order in writing was required to be passed.
- Issuance of an oral direction is not contemplated.
- The statutory functionaries are enjoined with a duty to pass written orders.

# ANIL KUMAR & ORS VS M.K.AIYAPPA (2013) 10 SCC 705

- Private complaint under section 200 Cr.P.C. filed before a Special Judge for Prevention of Corruption .
- Challenge made to the order of investigation under section 156 (3) of CrPC, for want of prior sanction.

# Necessary Precautions

- Preliminary inquiry is desirable in corruption charges
- Such preliminary enquiry has the sanction of Hon'ble SC, in P. Sirajuddin v. State of Madras - (1970) 1 SCC 595 : (AIR 1971 SC 520)
- However, Police cannot disregard provisions of the Cr. P.C. while proceeding further after such preliminary enquiry.

# Lalita Kumari vs Govt of UP and ors

## 2014 (1) JCC 1

- Preliminary enquiry could be carried out in case of cognizable offences even if it strictly needs to be recorded under section 154 crpc
- Arrest during investigation of cognizable offence may be considered in the facts and circumstances of the case

THANK YOU