

NATIONAL JUDICIAL ACADEMY



Refresher Course for CBI Courts

at NJA, Bhopal

06th to 08th December, 2019

Programme Report

PREPARED BY

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The National Judicial Academy organized three day “Refresher Course for CBI Courts” from 06th to 08th December, 2019. The participants were Special Judges of CBI Courts from across the country. The workshop was conceived to sensitize judges operating in CBI jurisdiction with contemporary developments in jurisprudence and to accrete knowledge base and skills requisite to enable qualitative and timely delivery of justice. The sessions facilitated deliberations on challenges faced while adjudicating issues and identifying best practices and solutions for a variety of problems; and the evolving horizons of relevant law and jurisprudence. The sessions covered areas like Prosecution of civil servants: Sanction for prosecution, arrest etc., Appreciation of Evidence including electronic evidence in CBI cases, Economic offences: Banking and corporate frauds, Cyber-crimes and role of CBI courts, Investigation by CBI and role of courts, Sentencing practices in corruption cases and other related issues.

Session 1: CBI: Why is this a Preferred Investigating Agency?

Speakers: Justice I. A. Ansari, Justice Dharnidhar Jha, Adv. B. V. Acharya

The first session of the workshop was CBI: Why is this a Preferred Investigating Agency? Justice Dharnidhar Jha commenced the session with a discussion on circumstances under which the judges of a Court of Sessions can take cognizance of a crime as per CrPC & moved on to the discussion relating to cognizance of offences under the Prevention of Corruption Act, 1988 by the Special Court, which invariably is a Special Court. It was emphasized that Session Court is not a court of original jurisdiction and only in certain circumstances it can take cognizance as court of original jurisdiction, one of such special circumstance is cases under PC Act. The speaker then moved on to the special features/characteristics of CBI investigation and emphasized that, CBI follows special procedure of investigation where everything has to be documented. Further there is multi-level supervision of each and every case being investigated by the CBI. CBI works centrally and therefore, normally it works independently and is not susceptible to influence. CBI has specialised branches for investigation of complex cases. CBI has its own legal and prosecution wing, which guides the investigation at all stages making it more full-proof. It has better system of performance evaluation as compared to local investigating agencies. These all characteristics make CBI the

premier and highly sought after investigating agency in India. After enumerating features of CBI investigation, speaker also discussed drawbacks in it, viz. now a days it has come on record that even CBI is amenable to influence and decreasing rate of conviction in CBI cases. Adv. B. V. Acharya differed with a view to certain extent saying that CBI may be a preferred investigation, but not always. There are instances when even state police have done better investigation than CBI. He enumerated examples like *J. Jayalalitha Disproportionate Assets case & JMM Bribery Case*. Justice Ansari then concluded the session quoting Dr. Ambedkar who in Constituent Assembly said that, “A Constitution will be proved to be good if the people who are implementing it are good & it will prove to be bad if the people implementing it are bad.” The same applies to CBI. Until the good people are there CBI will be good.

Session 2: Prosecution of Civil Servants: Sanction for Prosecution

Speakers: Justice I. A. Ansari, Justice Dharnidhar Jha, Adv. B. V. Acharya

Justice Dharnidhar Jha initiated the discussion referring to cases of Subramanian Swamy vs Manmohan Singh (2012) and Vineet Narain vs Union of India (1998). He explained the rationale behind the provision requiring sanction for prosecution of civil servant saying that a public servant should not be unnecessarily harassed while in discharge of his legal duty. This is a safeguard provided to an honest civil servant. He then went on discussing provisions of section 197 of CrPC and sec. 19 of PC Act in detail. He emphasized that sanction to prosecution is *sine qua non* for prosecution of civil servant as it goes to the root of the matter. No prosecution can be initiated against the civil servant/public servant without obtaining prior sanction from competent authority. The discussion then shifted to cognizance of offence by judge under sec. 319 of CrPC and requirement of sanction at that time when such cognizance is to be taken against the public/civil servant. He discussed various case-laws on the topic viz. *Kishor Singh vs State of Bihar*, *State of Maharashtra vs Sharadchandra Vinayak Dongre*, *K. Bhanu and Dharampal's cases* etc. Adv. Acharya discussed the hurdles involved in obtaining the sanction for prosecution and also discussed sanction to prosecute retire civil servant and relevant case-laws. Justice Ansari summarized the discussion saying that sanctioning authority has to take a stick of material

available before it and then only take decision to grant or refuse to grant sanction. The order to be passed by the sanctioning authority in any way must be a reasoned order. If the order is not a reasoned order, the sanctioning authority can be summoned to give evidence in court. The recent judgement of Hon'ble Supreme Court in case of *Manju Surana* was also discussed while discussing requirement of sanction to pass order under sec. 156(3) of CrPC. Session was concluded with cautioning the participants that it is their duty to protect honest civil servants but at the same time it should also be seen that no dishonest public servant takes benefit of provisions relating to sanction to prosecution.

Session 3: Prosecution of Civil Servants: Arrest and Investigation

Speakers: Justice I. A. Ansari, Justice Dharnidhar Jha, Adv. B. V. Acharya

This session was continuation of earlier session. The requirement of sanction even for arresting the civil servant was discussed with special reference to judgements of Hon'ble Supreme Court in cases of - *Anil Kumar and Ors. v. M.K Aiyappa and Anr.*, (2013) and *L. Narayana Swamy v. State of Karnataka*, 2016. The cases like *Arnesh Kumar vs State of Bihar (2014)*, *Dr. Subramanian Swamy vs Manmohan Singh*, *Vineet Narain vs Union of India*, *Manju Surana vs Union of India* etc. were discussed in detail. The requirement of recording reasons for arresting a person and Constitutional basis for the same was discussed with special reference to sec. 41 of CrPC. It was emphasized that the police should not arrest any person merely because they have power to arrest and it is the duty of courts to keep close watch on them and be the guardian of constitutional rights of citizens. Cognizance on private complain against civil servants and relevant cases viz. *A. R. Antulay*, *Shiv Nandan Paswan*, *Devarapalli Satyanarayan* etc. were discussed in detail. Justice Ansari concluded the session raising the issue as to what would be the procedure to prosecute judge under PC Act. It was agreed that no special status is given to judge in PC Act.

Session 4: Economic Offences: Banking and Corporate Frauds

Speakers: Justice S. Talapatra, Justice Atul Sridharan

The session was commenced by Justice S. Talapatra explaining the concept of white collar crime. He stated that mostly economic crimes are white collar crimes e.g. fraud, breach of trust, bribery, money laundering, chit-fund scams etc. The corporate frauds involve loss to investors, loss to government exchequer and to a general public at large. These are the offences which can hamper the economy of the country and hence should be dealt with severely. Economic offences like chit fund scams, insider trading, inflation in accounts, falsification of documents etc. and *modus operandi* of such crime was explained. The complexities in investigation and trial of economic offences having cross border implications were discussed. He also discussed real cases like Healthcare fraud in US, Ayushman Healthcare fraud in India etc. Justice Atul Sreedharan then took over and emphasized that the common thread that binds both accused/perpetrator and victim of economic offence is their greed. Accused knows and understands the greed of victim and takes advantage of it. He discussed the issues like Ponzi schemes, banking frauds showing fake letters of undertaking etc. The dangers of repeated restructuring of corporate loans was also discussed. He concluded saying that in such cases judiciary should always apply deterrent theory of punishment so as to set a precedent for other criminals.

Session 5: Cyber Frauds in Banks: Modus Operandi of Crime

Speakers: Justice S. Talapatra, Justice Atul Sridharan, Mr. Anil Kumar

Mr. Anil Kumar started this session with his presentation. He explained the concept of cyber-crime and cyber-criminal. He explained various types of cyber-crimes like phishing, vishing, skimming, hacking, hoax-mail, cloning etc. He then discussed two real case studies viz. Chennai Credit card fraud and Pune Illegal Money transfer case which involved cyber criminals. He explained the concepts like SAAS i.e. Software as a Service, IOT i.e. Internet of Things etc. He shared a case where former Prime Minister VP Singh filed complaint saying Rs. 3.5 lakhs were transferred to

his son's account by unknown person and when investigated it revealed that this transaction was done from remote server located in some other country. Then he discussed concepts like data security, data protection etc. Most of the participants raised their questions about cyber-crimes and panel tried to explain it. It was impressed that cyber frauds are multi-layered frauds which are one of the most intriguing forms of corporate fraud and to investigate it you need to have a prompt action. If there prompt lodging of complaint the chances of tracing the criminal are high as reverse trial can be started immediately making it easy to trace the source.

Session 6: Electronic Evidence: Collection, Preservation & Appreciation

Speakers: Ms. N. S. Nappinai, Mr. Anil Kumar

Chair: Justice S. Talapatra, Justice Atul Sridharan

The sixth session was Electronic Evidence: Collection, Preservation & Appreciation. Adv. N. S. Nappinai started the session with her presentation on electronic evidence. She explained the genesis and various types of electronic evidence. It was stated that Indian Law on electronic evidence is based on UNICITRAL Model Law on electronic evidence. There is nothing special about electronic evidence except the fact that it is more susceptible to tampering than the physical evidence. She explained the concept of 'Digital Signature' and authenticity attached to it. It was said that in modern days, there is no field which is not touched by electronic evidence. In each every case you will be having electronic evidence either as CDR details, CCTV footages, CDs, Call details etc. Then she went on to discuss the life cycle of electronic evidence and care to be taken while collecting and preserving such evidence. She explained the concept of 'hashing' or 'hash value' of a document as well as of electronic device. The importance of mirror imaging and its relevance in appreciation of evidence was explained in detail saying that mirror imaging doesn't change the hash value of the original device or document unlike copying, cloning etc. She enumerated six stages of cyber forensics as – identification, acquisition, authentication, analysis, documentation and giving testimony in court. Then she went on to discuss important judgements on the topic viz. *Anvar vs. Basheer*, *Navjyot Sandhu*, *Shafi Mohammad* etc. She also discussed the provisions of section 65B of Indian Evidence Act and its relevance to the appreciation of electronic

evidence. She also discussed recent judgement of Rajasthan HC in case of *Tomaso Bruno vs State of UP (2015 SCCOnline Raj 8331)*. Mr. Anil Kumar then explained the procedure to be followed while collection and documentation of electronic evidence and its importance. The session was concluded with a concluding remarks by Justice Atul Sreedharan.

Session 7: Forensic Evidence in CBI Cases

Speakers: Dr. T. D. Dogra, Justice Atul Sridharan

Justice Atul Sreedharan opened the session explaining the importance of forensics in criminal investigation and trial and handed over the floor to Dr. T. D. Dogra. Dr. Dogra commenced the session with his presentation on relevance of forensic evidence in criminal trials. He summarized the history and evolution of forensic science in brief and its relevance in the criminal trial. He said, forensic medicine is the application of the knowledge of medical sciences in aid to the administration of justice and law. He claimed that since every patient is a possible litigant in the future, forensic medicine is exceptionally important. He then summarized the three main aspects of forensic evidence viz. Forensic Pathology which involves the postmortem examination of the deceased, Clinical Forensic Medicine which involves clinical medical examinations of living persons & Toxicology which is essentially the study of poisons. He explained various concepts like DNA Profiling, Ballistics Photography, 3D Facial Reconstruction, Forensic Carbon-14 Dating, Digital Surveillance XBOX, DNA finger printing etc. He then elaborated the Frye Test as applied in *Frye v. United States, 293 F. 1013 (D.C. Cir. 1923)* i.e. *first lie detector test in the world*. It was stated that expert opinion is of two type's viz. Data Evidence and Opinion Evidence. He affirmed that the expert is not a witness of fact and gave three parameters for expert opinion viz. Expert evidence is of advisory character, Expert should only furnish scientific data that is necessary for the judge to form a conclusion on the matter & Expert only deposes and does not decide. He explained Daubert Standard for forensic evidence. He concluded citing some contemporary & future developments in forensic science viz. Chimera, ESP etc. He also responded to the queries of participants and discussed cases in which he assisted in investigation like Asiya Jan and Nilopher Jan case, Nithari Serial Killings case etc.

Session 8: Sentencing Practices in Corruption Cases.

Speakers: Justice A. V. Chandrashekar, Justice Atul Sridharan

The last session was Sentencing Practices in Corruption Cases. Justice A. V. Chandrashekar commenced the session explaining the theories of punishment and importance of proper sentencing practices. He contended that sentencing is an integral part of every trial. Whenever a conviction happens, it is the bounden duty of the judge to sentence the accused in a scrupulous manner. More so in cases involving corruption by a public servant. In such cases a judge should always go for deterrent theory of punishment. It was stated that in India there are no set guidelines or standards for sentencing and each judge has some leverage in sentencing, but the rationale behind the sentence should always be based on the facts and circumstances of the case. He then summarized various factors that need to be taken into consideration while sentencing in corruption cases. He also discussed the case of *State of Rajasthan v. Vinod Kumar, (2012) 6 SCC 770* and the law laid down therein. He reiterated that as far as corruption cases under the Prevention of Corruption Act are concerned, the primary objective is deterrence and hence the sentence should be awarded so as to deter people of similar mindset from committing the same crime. The discussion was then taken over by Justice Atul Sreedharan who re-iterated that there are three different schools of thought when it comes to the objectives of punishment viz. deterrence, retributive and reformative. He emphasized that for prevention of corruption, the punishment should focus on the first two objectives i.e. deterrence and retribution. He reasoned that these crimes are not crimes of passion and that they involve a lot of careful and deliberate planning. The element of *mens rea* is much more apparent and therefore, the sentencing also should be severe. The panel then responded to the queries put forth by the participants and at the end refresher course was concluded with expression of vote of thanks followed by audit of the course by participants.
