

REPORT

National Conference of the Presiding Officers of Vigilance/State

Anti Corruption Bureau Courts (P-863)

Prepared by Programme Coordinator:

K. Pattabhi Rama Rao, Asst. Prof.

The programme is designed for the judges who preside the courts of the Special Judges appointed under section 3 of the Prevention of Corruption Act and dealing with the cases instituted by the State anti-corruption department. The course is designed to facilitate the participant judges to discuss various legal issues which they need to tackle in day to day work of their courts. It is expected that the conference broadens their vision on justice related issues and enhances their skills for more effective discharge of their duties. Twenty six judges nominated by different High Courts participated in the conference. Conference commenced with the introductory remarks by Prof. Geeta Oberoi, in charge Director of the National Judicial Academy. She mentioned the importance of the conference and the menace of corruption and its ill effects on the society. After the self introduction of the participants Mr. Pattabhi Ramarao, Assistant Professor and the course coordinator of the programme made a power point presentation on International Concerns on the problem of Corruption and he dealt with the UNCAC- The United Nations Convention Against the Corruption. Mr. Rao dealt with the influence of the convention on Indian anti corruption laws and he also elaborately discussed the provisions of the proposed anti-corruption legislation in India. Mr. Rao expressed his opinion that in the guise of amending the present Act in tune with the UNCAC, the parliament is making the provisions for diluting the law. He criticized the proposed provision requiring sanction to prosecute even the retired government servants. He also opined that despite apparent failure in implementation of Criminal Law Amendment Ordinance, 1944 the same provisions are being incorporated in the legislation and hoped that the proposed bill will not be cleared by the law making houses. Justice Chandresh Bhushan chaired the sessions. In the second session justice Chandresh Bhushan made a presentation on anti-corruption laws in India and there was an open and general discussion on various provisions of PC Act. Mr. Rao also made a presentation on the Special position of the Judge appointed under section 3 of the P C Act and gave thumb nail sketch of the existing anti-graft laws.

Mr. Rajesh Seth, a senior police officer working in Maharashtra State Anti-Corruption Bureau addressed the participants on Investigation of Cases under Prevention of Corruption Act and he narrated his experiences in investigation of the cases. The participants have discussed the issues relating to the investigation of the cases. Mr. Seth also spoke on the problems that the investigating officers encounter in the cases relating to the corruption cases from the side of courts. In the fourth session there was a break out group discussion and after discussing for thirty minutes, the participants presented their views in the challenges facing the Vigilance and ACB Courts. One main problem that was discussed is the petitions filed for discharge by each accused one after another with an intention to delay the trial. Justice Chandreh Bhushan who chaired the sessions agreed with the views of the participants and suggested that the judge instead of waiting for a petition from the accused can on his own decide whether discharge is possible. Some of the judges expressed that there are practical difficulties in adopting the course as there can be allegations in case any accused is discharged without an application being filed by the accused.

In the fifth session Justice Talapatra made a power point presentation on Understanding "Criminal Misconduct". Justice Talapatra narrated historical evolution of anti- corruption laws and how the term emerged in due course of time. Justice Talapatra mentioned a number of judgments in this regard. Justice Joymalya Bagchi and Justice Mukta Gupta chaired the sessions.

In the sixth session Justice Mukta Gupta made a power point presentation on the theme Public Servant: A Dynamic Concept. She explained the difference between public servant in the Indian Penal Code and the Public Servant in the Pc Act. Justice Mukta Gupta referred to case laws and the hard copies of her pwer point presentation are enclosed.

Justice Talapatra made a presentation on Sanction to Prosecute: Immunity or Impunity. He referred to various judgments extensively and highlighted the judgment in Abhay Chauthla. He also opined that the proposed amendments to the PC Act will water down the well built judicial scholarship on the subject. The essential requirement for prosecuting a public servant is a sanction by the government under Section 19 of the P C Act. This provision generated enough litigation and more particularly when the case is against highly placed influential persons it is utilized to procrastinate the case for years together. Several questions regarding the sanction and its validity were decided by the courts. In the judgment dated 6.8.2014 in *Manzoor Ali Khan vs. Union of India* 2014(9) SCALE 202, the Supreme Court upholding the constitutional validity of

Section 19 of the PC Act observed that "a fine balance has to be maintained between need to protect a public servant against malafide prosecution on one hand and the object of upholding the probity in public life in prosecuting the public servant against whom prima facie material in support of allegation of corruption exists, on the other". In *State of Bihar vs. Rajmangal Ram*, 2014(4) SCALE 338, the Apex Court explained the way in which the validity of the sanction can be assessed. Approach of the Supreme Court regarding sanction can be gathered from some of the recent judgments rendered by it and there was discussion on these issues.

In the eighth session Justice Joymalya Bagchi extensively dealt with the provisions of the PC Act on presumptions and in particular the presumption of the Culpable State of Mind. He mentioned about the basic presumption of innocence and said that though it is not constitutional right it has attained a respectable status and this presumption cannot be overturned unless some basic facts are proved by the prosecution. The essence of corruption is receiving illegal gratification and obtaining any pecuniary advantage illegally. Such transactions often are *quid pro quo* deals involving a demand for gratification and its compliance. The Statute provides for a presumption of certain facts in view of difficulties in proving the secretive and shady transactions and stealthy accumulation of wealth by illegal means by public servants. Courts while dealing with the cases under the P C Act often are satisfied with the evidence on receiving of gratification and recovery of tainted currency notes from the possession of the public servants in trap cases and the evidence regarding the demand for bribe is always not clinching. Section 20 of the P C Act which provides for presumption against the accused as to the existence of certain facts to some extent is a compromise with the principle presumption of innocence which is considered not only as a fundamental feature of a fair criminal trial but also recognized as a human right. The courts need to balance between the presumption of innocence and statutory creations of reverse burdens. A lengthy discussion on this subject amongst the judges in the conference proved fruitful to enhance their knowledge. There was discussion specifically on the judgments in *V. Venkata Subbarao Vs.State*, *C M Sharma V Kannan Mukut Bihari and Anr. Vs.State of Rajasthan and Narendra Champaklal Trivedi vs State of Gujara*.

On the last day of the conference in the ninth session Justice Joymalya Bagcchi initiated the discussion on the right to speedy trial and the right to fair trial. He analysed various causes for the delay in disposal of the cases and the conference discussed the possible solutions. Justice

Talapatra and Justice Mukta Gupta made their value additions to the discourse. Later Justice Mukta Gupta made presentation on sentencing practices in corruption cases. The discussion was on the following points.

Whether the principles enunciated by the Supreme Court in *A B Bhaskara Rao* can be considered as guidelines on sentencing the convicts in cases under P.C. Act and whether these guidelines are applicable in cases of abetment and attempts also as the minimum sentence is prescribed for abetment and attempt of the offences punishable under this Act ?

2. Whether the court can take age of the convict and his health condition in to account to show leniency in sentencing the convict and as a ground for reducing the period of sentence of imprisonment?

3. According to the court the quantum of the amount is immaterial determining the length of the sentence of imprisonment. The sensibilities of man of ordinary prudence evoke sympathy for the small employees who take paltry sums. Whether cadre or official position or the rank of the convict matters for deciding the sentence?

4. Whether the structure of punishments provided in the P C Act can be considered deterrent and adequate in cases of huge kick backs and whether the corruption by the members of political executive who breach the trust of the larger community of voters and cause indentation on to the faith in democracy need more severe penalties than the penalties prescribed for the other public servants? Whether good deeds of the convicted corrupt political leaders can be taken in to account to determine the punishment?

5. The court in *Syed Ahmed* above has extensively dealt with various disputed facts and expressed dissatisfaction for awarding lesser sentence. Whether the trial courts need any specific guidelines for deciding the quantum of fine apart from Section 16 of the P.C. Act ?

6. Whether Section 16 of the P. C. Act can be applied to decide the quantum of fine for the offences other than those punishable under Sections 13 and 14 of the P. C. Act.? Whether the matters referred to in section 16 of the P.C. Act can be taken in to consideration while determining the length of imprisonment?

All the three judges gave their opinions on the above topics. It was generally agreed that the guidelines stated in AB Bhaskara Rao case can be applied to all the cases including the cases of attempt and abetment. To the second point it was felt that the decision depends on the facts of each case. The majority judges in the conference opined that adequate and severe punishments shall be given in the cases of serious nature and when the courts come to conclusion that the amount involved is less it can award lesser sentence, but cannot award less sentence less than the statutory minimum. There was a discussion on Criminal law Amendment Ordinance 1944 while discussing on the confiscation and attachment of property. Justice Bagchi referred to the provisions of Prevention of Money Laundering Act. The conference concluded at 1:30 Pm.