

Programme Report of Programme No.P-872

National Conference of the Presiding Officers of CBI Courts, P-872 commenced at 10:00 am on 5.12.2014. Twenty five Judges from across the country participated in the conference. Prof. Geeta Oberoi, I/C Director, NJA, has given introductory remarks and in her remarks she highlighted the importance of the subject and ill effects of the corruption. Justice P.K. Misra and Mr. Sai Manohar Aramone also gave their introductory remarks. After that the participants introduced themselves and few of them have been exclusively dealing with the cases under prevention of corruption Act, whereas few others have been dealing with all kinds of cases which are normally dealt with by sessions judges.

Mr. K. Pattabhi Rama Rao, in the first session spoke about the international concerns for the problem of corruption. He narrated how United Nation's Convention Against Corruption was adopted. He also dealt with the proposed amendments to the prevention of corruption Act, 1988 through Prevention of Corruption Act (Amendment) Bill 2013 (Bill LIII of 2014) Copy of the bill was furnished to every participant. Mr. Rao opined that the present bill will in effect dilute the anti-corruption law in India and that in the guise of making law attuned to UNCAC, the government proposed the amendments to dilute the existing law. Mr. Sai Manohar Aramone and Justice P.K. Misra also concurred with Mr. Rao. There was discussion on criminalizing bribe giving and on proposed extension of protection of Sec.19 of the PC Act to the retired public servants.

In the second session Justice P.K. Misra gave thumb nail sketch of the important anti corruption legislation in our country. He pointed out certain loopholes in the existing law. He also gave the evolution of anti-corruption law in our country starting from the provisions of the Indian Penal Code, 1860 – Section 161 to 165. He made comparative analysis of the provisions of the prevention of corruption Act, 1947 and the provisions of the Indian Penal Code 1860. He narrated his experience with corruption cases as an advocate as well as a Judge.

In the third session Mr. Sai Manohar Aramone, addressed the Judges on special investigation procedures and he elaborated the provisions of the CBI

Manual and explained as to how the CBI Manual attained legal status. He explained how the CBI, registered Source Information Report, conduct preliminary enquiry and how the FIR will be registered. He narrated the problems with existing system and at the same time the checks and balances provided by the system. There was live interaction with him and participating judges got their doubts in the investigation procedures clarified. There was interesting discussion on the validity of the CBI manual and the judgments in Vineet Kumar and Ganeshwaran. In the fourth session all the participating judges were divided into five groups and they discussed GroupWise in separate rooms on the challenges facing CBI courts; for about twenty-five minutes later, one representative of each made presentation of the views of the members of their group. They have expressed concern over filing of the discharge petitions one after the another and Justice Misra advised them not to wait till all the accused file their petitions and the court can examine the issue even without such application under section 239 Cr.P.C. The judges have expressed the following concerns:-

The fifth session on the second day of the conference commenced at 9:30 AM. Justice Manmohan Sarin, Chief Justice (Rtd) spoke on the importance of sanction U/Sec.19 of the PC Act. The requirement of sanction shall be a shield to the honest persons and it shall be a sword to the corrupt persons to fight a case against corruption. Section 19(1) (a) (b) and (c) and 19(2) deal with the requirement of sanction whereas section 19(3) (a) (b) and (c) and 19(4) deal with the course when there is an error oblivion or irregularity in the sanction. Justice Sarin dealing with the subject deliberated on the judgments in "Rajmangal" and Abhay Singh Chautala". Justice Sarin questioned incoherency in the judgments of the Supreme Court as to the stage in which the accused can challenge the validity of the sanction. Justice P.K. Misra intervened to point to section 19(3) (a) of the P.C.A, which says that even in the absence of the sanction, the appellate or revisional court, as matter of law cannot intervene. There was discussion on the issue whether Section 19(3) nullifies the purport of section 19(1) of the PCA. Justice Sarin summed up:

- (1) Relevant date to decide the validity of sanction is the date on which cognizance is taken.

(2) Absence of sanction can be agitated at threshold, but omission, error or irregularity cannot be a ground for discouragement. The following judgments were discussed. (1) P.S. Badal vs. State of Punjab 2007 (1) SCC 1 (2) State of Bihar Vs. Rajmangalrah 2014 (4) SCALE 358 (3) CBI Vs. Ashok Agarwal (2014)

Justice Talapatra, Judge, High Court of Tripura, addressed the Judges on attachment of property. He narrated the provisions of the Cr. PC and P.CA and put the important issues for discussion. He mentioned about the Criminal Law (Amendment) Ordinance, 1942 and explained the provisions of the Cr.PC. regarding attachment of the property concerned in the corruption cases. He detailed the procedure for parting the order of attachment. However, he opined that the procedure prescribed under present law is cumbersome.

In the sixth session, Justice Manmohan Sarin discussed the concept of public servant. He said: "Earlier public servants were defacto rulers of the country armed with a number of rules and regulations". He explored section 2 © of the P.C.A and S-21 of the I.P.C. and opined that the concept of public servant has wide ambit of two Private parties appoint an arbitrator he is not public servant and if any competent authority appoints an arbitrator he becomes public servant. Justice Sarin stated that bureaucrats, and the political executive are inextricably linked and quoted the report of second Administration Reforms Committee. He further stated that Lokayukta in Delhi can inquire into political corruption, but not the corruption of bureaucrats, Justice Sarin also informed that there is enormous increase of funds for number of activities which provided opportunity to the public servant for being corruption.

Later in the same session from 12:30 pm to 1:15 pm the conference discussed on presumptions under section 20 of the PCA. Justice Talapatra discussed on presumption of law and presumption of fact. Presumption of death of a person is not heard of seven years is a classic example of presumption of law. Justice Talapatra spoke on S.20 of the PC Act. Justice Sarin and Justice P.K. Misra gave examples of the cases in which the presumption can be raised. There was discretion on the judgment in M.B. Joshi and State of A.P. Vs. Umeshchandra Rao

2004 (4) SC 299m AIR 2004 SC 2042. In these two cases Supreme Court held that section 114 of the Evidence Act applies to the presumption under sec. 20 of PCA judgment in M. Narain Rao Vs. State of .P. was also discussed. Justice S. Talapatra discussed the circumstances in which the presumption can be drawn. There was a discussion on the proviso of Section 20 as to trivial amount and as to when the account is to be considered as trivial. Justice P.K. Misra and Justice Manmohan Sarin also contributed their comments to the discussion.

Post noon in the seventh session Dr. Harold D'costa, explained the various modes in which cyber crime is being committed by the Bankers and in respect of banks. He explained about the credit card frauds and also the ways in which the miscreants swindle bank funds. He demonstrated the way in which the SNS facility is asked to cheat bankers. He spoke about cyber security through OTP and other modes.

In the eighth session Mr. Debasish Nayak addressed the judges on appreciation of digital evidence and legal provisions relating to appreciation of digital evidence. He extensively discussed the provisions of Information Technology Act. Reference was made to the judgments in Navajot Sandhu and Anwar Uv. P.K. Basheer and there was good discussion on what is primary evidence and what is secondary evidence.

On the ninth session scheduled on the last day of the conference, Justice P.N. Prakash, Judge High Court of Madras, Justice S. Talapatra, Judge, High Court of Tripura and Justice P.K. Misra, Chairman, Goa Human Rights Commission participated as Resource Persons. Justice Misra gave his opening remarks on the importance of speedy trial and fair trial. Justice S. Talapatra gave a discourse on speedy trial. The judgments in Raj Mouli Sharma, Common Cause, Ramachandra Rao , Motilal Saraj and Ranjan Dwivedi were discussed in detail. Later in the following session, Mr. K. Pattabhi Rama Rao made presentation on sentencing practices. A power point presentation was given. Later, Justice P.N. Prakash explained further on sentencing. An interesting question as to whether plea bargaining can be allowed in the case of presentation of corruption was discussed

and it was opined by the resource persons that in view of the notification issued by the Central Government under section 265A Cr. PC, the special judges can entertain plea bargaining in cases under PC Act.

Justice P.N. Prakash also explained the procedure of the crime. He mentioned the provisions of P.M.L. Act and also the provisions of the criminal law amendment ordinance, 1944.

Justice P.K. Misra, delivered the concluding remarks. The conference came to an end at 1:45 PM.