Circular No.34/2016

Sub:- Judicial pronouncements relevant to implement the policy of `Zero Tolerance to Corruption’ – reg.

Ref:- 1) Lr. No.40/Camp/DVACB/2016 dated 28.06.2016
4) Presentation in the SPM at Kozhikode dated 22.12.2016
5) GO(Rt.)No.4/2002/Vig dated 03.01.2002
6) Lr. No.7309/E3/2015/Vig dated 03.11.2015

The Legal Advisers of VACB – Sri.C.C Augustine (C.C.A), Sri.Biju Manohar A. (B.M.A), Sri.Unnikrishnan S. Cherunniyoor (U.K.C), Sri.O.Sasi (O.S), Sri.C.P.Suraj (C.P.S), Sri.P.K.Muralikrishnan (P.K.M), Sri.V.K.Shailajan (V.K.S), Sri.Rajmohan R. Pillai (R.M.P) and Sri.Renjith Kumar L.R. (R.K.L.R) has studied and gathered all the relevant and latest Judgments to refer and guide VACB in its anti-corruption work. Those are compiled subject-wise for guidance of all officers:-

1. **IMPACT OF CORRUPTION**

Corruption corrodes marrows of economy and causes incurable concavity in Rule of Law and good governance. Corruption by public servants has become a gigantic problem (see - *Niranjan Hemchandra Sashittal and Another V. State of Maharashtra* 2013 KHC 4205) *(R.K.L.R). Large scale corruption retards the nation building activities and everyone has to suffer on that count. Efficiency in public service would improve only when the public servant does his duty truthfully and honestly". (See- *State of M.P. V. Shambu Dayal Nagar* -[AIR 2007 SC 163]. Corruption devalues human rights, chokes development and undermines justice, liberty, equality and fraternity which are the core values in the Indian preambular vision *(Subramanian Swamy v. Manmohan Singh* – (2012) 3 SCC 64).*(P.K.M.).
2. PUBLIC OFFICE IS HELD IN TRUST FOR THE PEOPLE *(C.P.S)*

In *Vineet Narain & Ors. vs. Union of India & Anr.*, reported in (1998) 1-SCC 226, it was observed as under: "It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law". The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to underdeveloped countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. *Increasing corruption has led to investigative journalism which is of value to a free society.* The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries.

3. **P.C ACT EQUALLY APPLICABLE TO ALL PUBLIC SERVANTS. *(V.K.S)***

In *Vineet Narain and others v. Union of India and another* (AIR 1998 SC 889), the Apex Court held that: "Be you ever so high, the law is above you". The Apex Court emphasised that the Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the Government agencies.

4. **LEGISLATION TO EXCLUDE TOP LEVEL OFFICERS –ILLEGAL. *(CCA)***

In *Subramanian Swamy (Dr.) and Another v Director, CBI and Another* AIR 2014 SC 2140-, the Supreme Court invalidated Section 6 A which requires approval of the Central Government to conduct any inquiry or investigation into any offence alleged to have been committed
under the PC Act, 1988 where such allegation relates to (a) the employees of the Central Government of the level of Joint Secretary and above and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, government companies, societies and local authorities owned or controlled by the Government, on the ground that it violate Art.14 of the Constitution.

5. **WHO CAN CONTAIN CORRUPTION? *U.K.C.*

In *Lee V.S.and Others v.State of Kerala and Others* (2010(1) KLT 691), the hon. High Court of Kerala observed that: - In spite of being a democratic Nation, the citizens stood effectively excluded from contributing to the transparency in the functioning of the State and its governance and containing corruption in the instrumentalities which, and through which, the governing process is carried out. There was also apparent conflict between larger public interests, including preservation of confidentiality of sensitive information on the one hand and the imminent abundant public need that transparency and accountability is ensured, including by the participation of the People, in the working of every public authority, on the other. This mischief and defect in the law that prevailed was remedied by the Parliament. The remedy provided by the Parliament is that wherever there is substantial financial support, directly or indirectly, by funds provided by the appropriate Government, the People, the ultimate repository of the sovereign power, have the right to know and therefore, they have right to information and hence, the opportunity to secure access to information is provided by the RTI ACT. The Apex Court in *Central Board of Secondary Education and Another v. Aditya Bandopadhyay and Others* (2011 (3) KLT SN 120, held that Every citizens have the right to access to all information held by or under the control of any public authority except those excluded or exempted under the RTI Act. **The object of the Act is to empower the citizens to fight against corruption and hold the Government and their instrumentalities accountable to the citizens, by providing them access to information regarding functioning of every public authority.** Certain safeguards have been built into the Act so that the revelation of information will not conflict with other public interests which include efficient operation of the governments, optimum use of limited fiscal resources and preservation of confidential and sensitive information.
6. WHO CAN SET THE LAW IN MOTION? *C.C.A.

In Dr. Subramanian Swamy v Dr. Manmohan Singh and Another (AIR 2012 SC 1185), the Apex Court reiterated the Constitution Bench decision in A. R. Antulay v. Ramdas Srinivas Nayak. AIR 1984 SC 718 and held that there is no provision either in the 1988 Act or the Code of Criminal Procedure, 1973 (CrPC) which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence.

7. CAN VIGILANCE COURT DIRECT THE VIGILANCE SHO TO REGISTER FIR? (*UKC.)

In A. R. Antulay v. Ramdas Nayak and Another, AIR 1984 SC 718. In paragraph 27 of the said decision, the Hon'ble Apex court has ruled that "The Court of a Special Judge is a Court of original criminal jurisdiction. As a Court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the Court. Except those specifically conferred and specifically denied, it has to function as a Court of original criminal jurisdiction not being hidebound by the terminological status description of Magistrate or a Court of Session. Under the Code it will enjoy all powers which a Court or original criminal jurisdiction enjoys save and except the ones specifically denied." In view of the aforesaid Supreme court dicta, it becomes abundantly clear that the Special Judge has power to pass order under S.156(3) of the Code as a Court of original criminal jurisdiction. This power is not restrained or specifically denied by any statute.

8. PROSECUTION SANCTION/COGNIZANCE & 156(3) ORDER (*O.S.)

In Maneesh E. State of Kerala and Others –(2016 (1) KLT 323), the High Court held that 'sanction was required at the stage of taking cognizance only and not prior to it'. The Apex Court had already held in R. R. Chari v. State of U. P. (1951 KHC 241), M. L. Sethi v. R. P. Kapur and Another, 1967 (1) SCR 520, Nirmaljit Singh Hoon v. State of West Bengal and Another, 1973 (3) SCC 753 etc; that 'before a Magistrate can be said to have taken cognizance of an offence under S.190(1) (a) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding under S.200 and the provisions following that section. Where, however, he applies his mind only for ordering an
investigation under S.156 (3) or issues a warrant for arrest of accused, he cannot be said to have taken cognizance of the offence.

9. REGISTRATION OF FIR (*B.M.A.) by VACB Units

In Lalithakumari v. State of UP- AIR 2014 SC 187 – Apex Court held that where the information given to a SHO disclose a cognizable offence, it is the duty of the SHO to register an FIR, but the Apex Court in this decision has carved out exceptional cases, like allegations of corruption where preliminary enquiry can be conducted and concluded within fifteen days and in exceptional circumstances which may extend to six weeks time for completing the preliminary enquiry (pre-registration enquiry).

10. APEX COURT DECISIONS AGAINST STAY OF FIR UNDER PC ACT, *(B.M.A)

Satya Narayana Sharma Vs. State of Rajasthan (2001 CrlJ 4640), the Hon’ble Supreme Court held that there can be no stay of proceedings. However, the Hon’ble High Court in Moideen Kutty Vs. State of Kerala (2003 KHC 592) – held that prohibition against stay of proceedings under the PC Act cannot apply to the exercise of the power of the High Court to grant stay under article 226/227 of Constitution of India on the strength of the decision reported in AIR 1997 SC 1125.

In S.M. Datta v. State of Gujarat and Another 2001 (7) SCC 659, Apex Court held that “Criminal proceedings, in the normal course of events ought not to be scuttled at the initial stage, unless the same amounts to an abuse of the process of law. In the normal course of events thus, quashing of a complaint should rather be an exception and a rarity than an ordinary rule”

11. GROUNDS FOR QUASHING FIR *(C.P.S)

In State of Haryana and others vs Ch.Bhajan lal and others 1992 KHC 600. The Apex Court issued following guidelines :-

1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a
cognizable offence, justifying an investigation by police officers under S.156 (1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code.

5) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7) Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

12. WHEN COMPANY AS WELL AS PERSONS CONTROLLING THE AFFAIRS OF COMPANY CAN BE ARRAYED AS ACCUSED (*O.S.)

In Sunil Bharti Mittal v Central Bureau of Investigation AIR 2015 SC 923, the Apex Court held that if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well, as they are “alter ego” of the company. A corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy.
13. **ORDER FOR PRELIMINARY ENQUIRY / QUICK VERIFICATION BY COURT (R.K.L.R).**

In Babu A.J v State of Kerala and Another 2012(3) KLT 156 – The Kerala High Court held that - If the Special Judge orders preliminary enquiry to be conducted and completed within a specific time frame, it should be completed and report should be filed **unless the Special Judge is convinced that further time is to be granted for the said purpose.** Any failure on the part of the officer of the VACB in filing such report would amount to disobedience of the order of the Court, in which case also the officer of the VACB would be doing it at his own risk.

In WP(C)No.3524 of 2013 on 27th March 2013, observed that the word ‘Quick’ prefixing ‘Verification’ denotes a quick verification, the verification shall be done quickly to ascertain the correctness of the allegations.

14. **ORDER U/S 156(3) Cr.PC – NO TERRITORIAL JURISDICTION *(R.M.P)*

In Rasiklal Dalpatram Thakkar Vs. State of Gujarat & others (AIR 2010 SC 715) the Apex Court held that Investigating agency cannot retrain from conducting investigation on the ground that it had no territorial jurisdiction to investigate offence. Should investigate.

15. **PROTECTION AGAINST PROSECUTIONS *(C.P.S)*.

The very purpose of S.19 of Prevention of Corruption Act, section 197 Crpc and similar sections in certain special enactments imposing prerequisite provision for procuring ‘Prosecution sanction’ to prosecute a Public Servant is to save a public servant from vexatious and frivolous criminal proceedings. It is intended to give the public servant freedom and liberty to perform their duty without fear or favour and not succumb to the pressure of unscrupulous elements. It is a weapon at the hands of the sanctioning authority to protect the innocent public servants from uncalled prosecution and it is not intended to shield the guilty. It requires the prosecution sanction authority which is competent to remove the accused from the office to apply its mind into the materials collected during investigation and to take a decision as to whether there are prima facie materials to issue sanction permitting prosecution of the accused. In fact, it is only a shield against vexatious prosecution.
16. PROSECUTION SANCTION REQUIREMENT/DELAY/DENIAL/DERAILING ANTI-CORRUPTION ACTIONS *(C C A).*

The following are the Apex court decisions on 19 of PC Act.

1) 2007(1) KLT 47(SC) - Lalu Prasad Yadav Vs. State of Bihar - Prevention of Corruption Act 1988 Sec.19(l)(b) - Cr.PC 1973 Sec. 197 - Sec. 197 of the Code and Sec. 19 of the Act operate in conceptually different fields - In cases covered under the P.C Act in respect of public servants, sanction is automatic in nature and factual aspects are of little or no consequence - in a case relatable to sec. 197 Crpc, substratum and basic features have to be considered to find out alleged act committed has any nexus to discharge of duties of the public servant, - so is not in case of Sec. 19 of P.C Act.

2) 2007(2) KLT 529 (SC) - Paul Varghese Vs. State of Kerala - Prevention of Corruption Act 1988 Sec. 19(3) & (4)- mere error, omission or irregularity in sanction is considered fatal unless it has resulted in failure of justice or has been occasioned thereby.

3) 2009(1) KLT 831 - Peoples Counsel for Civil Rights Vs State of Kerala - for granting sanction, granting authority need not give an opportunity of hearing to the accused.

4) Mansukh Lai vithal Das Chauhan Vs. State of Gujarat 1997 Crl.J 4059 (SC) - Prosecution sanction u/s. 19 of PC Act- Supreme Court held that High Court cannot give direction to the Sanctioning authority to grant sanction.

5) SK Bhargava Vs. State of Rajasthan 2002 Crl.J 2435(Raj) FB - Trial court cannot direct prosecution to obtain Prosecution sanction.

6) Manoj Bhai Bhagavan Das VS. State of Gujarat - 2002 Crl.J 2134 (Guj) - Special Judge cannot direct for issuing sanction for prosecution.

7) State of Punjab Vs. Mohammed Iqbal Singh 2010 Crl.J 1436 (SC) –Held that once competent authority has declined sanction, he cannot subsequently re-consider and review its order without new materials.

8) State Vs. K.Narasimhacharya AIR 2006 (SC) 628 - sanction order issued in the name of Governor is a public document covered under sec.74 of Evidence Act and the Secretary who
signed the order need not be called as a witness to prove the order.

9) **State Vs. Parameswaran Subramani** AIR 2010 (SC) 584 - Sanction under sec.19 is not necessary for offence under Sec. 12 of PC Act.

10) **Sathyanandan CK and another Vs. CBI and others** -- Prevention of Corruption Act, 1988 Sec. 19 - Discretion to grant or decline prosecution sanction is vested in the sanctioning authority as the said authority alone would, be a real judge to consider whether in the alleged facts and circumstances, there was a real abuse or misuse of office held by the public servant - thus sanctioning authority can refuse sanction, even in a case where an offence is made out prima facie against public servant for various reasons.

11) **Subramaniam Swami Vs. Manmohan Singh and another** - 2012 KHC 4072 - Sanction for prosecution of a public servant - held grant or refusal of sanction is not a quasi judicial function and the person for whose prosecution the sanction is sought is not required to be heard by the competent authority before it takes decision in the matter.

**CHALLENGE ON PROSECUTION SANCTION: - *(B.M.A)*

1) In **Satyavir Singh Rathi Vs. State, reported in AIR 2011 SC 1748**, the Apex Court held that when adequate material is put up before the sanction authority for its application of mind, the sanction order issued does not suffer from any defect. In the said case, certain materials which were not yet available with CBI at that stage could not have been sent to Lt. Governor. But, the Hon’ble Supreme Court held that adequate material was forwarded to the sanctioning authority and therefore sanction is not vitiating.

2) In **Chittaranjan Das Vs. State of Orissa** ( AIR 2011 SC 2893) the Hon’ble Supreme Court held that once sanction for prosecution u/s 19 of Prevention of Corruption Act was sought and was declined by the competent authority, no prosecution under Prevention of Corruption Act is possible after his retirement.
3) Abhay Singh Chautala Vs. CBI (2011(7)SCC-141), when the accused has already retired from office or when the accused continues to be public servant, but in a different capacity or holding a different office than one which is alleged to have been abused, there will be no question of sanction.

4) In Prakash Pai H. (Dr.) Vs. State of Kerala 2015 (4) KHC 557, Gurudas N. (Dr.) Vs. State of Kerala 2015 (3) KHC 852, the High Court held that application of mind by the sanctioning authority has to be proved by examination of the person who issued prosecution sanction order.

5) In Savithri Vs. Deputy Superintendent, Vigilance & Anti-Corruption Bureau (2015 KHC 3702), the Hon'ble High Court held that Investigating Officer is not competent to prove the prosecution sanction order and it has to be proved by the person who issued it.

**JUDICIAL INTERVENTIONS FOR SPEEDY ISSUANCE OF PROSECUTION SANCTION. *(C.P.S)*

1) In Vineet Narain & Ors. vs. Union of India & Anr., reported in (1998) 1-SCC 226, The Apex Court held that “Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultations required with the Attorney General (AG) or any other law officer in the AG’s office.”

2) In Subramanian Swamy vs. Manmohan Singh & Anr., (2012) 3 SCC 64, The Hon’ble Supreme Court has recommended to the Parliament for amending the provision of sec.19 of PC Act to avoid delay in granting sanction. It is held that if the time limit fixed in the judgment in Vineet Narain’s case ends and if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet / complaint in the Court to commence prosecution within 15 days of the expiry of the aforementioned time limit.”
PROSECUTION SANCTION - CHANGE OF OFFICE ABUSED, STAGES OF PROTECTION – ETC; *(R.M.P)

1. **L. Narayan Swami Vs. State of Karnataka** - the Apex Court held that when a public servant who is not on the same post which he abused and is transferred (whether by way of promotion or otherwise to another post), he loses the protection under section 19(1) of the Prevention of Corruption Act, though he continues to be a public servant, albeit on a different post.

2. In **Anilkumar Vs. Ayyappa**, a two Judge Bench of Justice K.S. Radhakrishnan and Justice A.K. Sikri held that once it is noticed that there was no previous sanction the Magistrate cannot order investigation against a public servant while invoking powers under section 156(3) Cr.P.C.

3. **L. Narayan Swami Vs. State of Karnataka** A two-Judge bench of the Supreme Court has held that a Magistrate cannot order further investigation under section 156(3) of Cr.P.C. in relation to public servant in the absence of valid sanction.

4. **AIR 2013 SC (Supp) 431**
   Validity of sanction order – Not to be tested by adopting hyper-technical approach. Court cannot go into questions of adequacy of materials placed before sanctioning authority.

5. **AIR 2012 SC 1185**
   Competent authority can only consider whether materials placed by complainant or investigating agency prima facie discloses commission of offences – cannot undertake detailed enquiry to decide whether or not allegations made against public servant are true. Person against whom prosecution sanction is sought is not required to be heard by the competent authority.

6. **AIR 2011 SC 1363 – Failure of justice**
   The failure of justice would be relatable to error, omission, or irregularity in the grant of sanction – However a mere error, omission or irregularity in sanction is not considered to be fatal, unless it has resulted in failure of justice or has been a occasioned thereby.
SANCTION U/S 19 OF PC ACT. (*R.K.L.R.*).


S.19(1)(C), S.13(1)(d) - Accused, an employee of an undertaking in State Government of Uttar Pradesh was posted on deputation in the State of Uttarakhand-Caught while accepting bribe - Accused was repatriated to the parent department on the same day- State of Uttarakhand also gave sanction - Whether valid sanction - Held, power to repatriate does not embrace within itself the power of removal from office as envisaged under S.19(1)(c) of the Act - Term 'removal' means the act of removing from office or putting an end to an employment - Distinction between dismissal and removal from service is that former ordinarily disqualifies from future employment but the latter does not - Hence, quashing of prosecution is justified in the absence of sanction from the State of Uttar Pradesh.


S.19(1) - Sanctioning authority when grants sanction on an examination of the statements of the witnesses as also the material on record, it can safely be concluded that the sanctioning authority has duly recorded its satisfaction and, therefore, the sanction order is valid.


S.19 - Criminal Procedure Code, 1973, S.197-corruption charge- Sanction to prosecute - Appellant Officer of IAS charged of having participated in meeting of Corporation in which resolution to invest in ICDs was passed despite earlier cabinet resolution to contrary - Participation of appellant in meeting of Corporation had no nexus with office of Industries Commissioner which he held as IAS officer- Post abused was that of nominee Director of Corporation - **Sanction of President of India or Governor who nominated him as Director was not necessary** - Plea that he cannot be prosecuted as he was not in charge of conduct of Corporation's business not tenable as appellant is not
prosecuted for implementation of resolution but was tried for its passing.


S.19 -Sanction for prosecution -Prosecution must send entire relevant record to sanctioning authority including FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. **Record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.**

S.19 - Sanction for prosecution -Provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

5. **State of Bihar and Others V. Rajmangal Ram.** (2014 KHC 4208).

S.19(3) -Irregularity in sanctioning prosecution -Whether fatal to prosecution - Held, any error, omission or irregularity in the grant of sanction will not affect any finding, sentence or order passed by a competent Court, unless in the opinion of the Court, a failure of justice has been occasioned.

Prevention of Corruption Act, 1988 - S.19 - Sanction to prosecute a public servant - Purpose - It is a check on frivolous, mischievous and unscrupulous attempts to prosecute an honest public servant for acts arising out of due discharge of duty and also to enable him to efficiently perform the wide range of duties cast on him by virtue of his office.

6. **Manzoor Ali Khan V. Union of India and Others** (2014 KHC 4503)

S.19 - Whether S.19 of PC Act is unconstitutional - Held, requirement for sanction is not unconstitutional -Competent Authority has to take a decision on the issue of sanction expeditiously -Constitution of India, Art.32, Art.226.
7. **State of Punjab V. Labh Singh** (2014 KHC 4805)

S.19, S.13(1)(c), S.13(2) -Sanction for prosecution not required if public servant had already retired on date of cognizance by Court - Thus, High Court erred in setting aside order passed by Special Judge framing charges under S.13(1)(c), S.13(2).

S.197 - Unlike S.19 of the POC Act, the protection under S.197 of CrPC is available to the concerned public servant even after retirement.

8. **Nanjappa V. State of Karnataka**. (2015 KHC 4473)

S.19(1) -Question regarding validity of sanction under S.19(1) can be raised at any stage of proceedings before the Trial Court -If Trial Court proceeds, despite invalidity attached to sanction order, same shall be deemed to be non est in the eyes of law - However, it shall not forbid a second trial for the same offences, upon grant of a valid sanction for prosecution.

17. **THERE CAN BE NO INDEFINITE STAY ON INVESTIGATION/TRIAL- *(U.K.C)*

The Apex Court in **Intiyaz Ahmad v.State of Uttar Pradesh and Others** I (2012(2) SCC 688) held that the power to grant stay of investigation and trial is a very extraordinary power given to High Courts and the same power is to be exercised sparingly only to prevent an abuse of the process and to promote the ends of justice. Supreme Court held that it being the last Court and in exercise of the Apex Court's power to do complete justice which includes within it the power to improve the administration of justice in public interest, the Apex Court give the **certain guidelines for sustaining common man's faith in the rule of law and the justice delivery system.** They are:-

(i) such an extraordinary power has to be exercised with due caution and circumspection.

(ii) Once such a power is exercised, High Court should not lose sight of the case where it has exercised its extraordinary power of staying investigation and trial.

(iii) High Court should make it a point of finally disposing of such proceedings as early as possible but preferably within **six months** from the date the stay order is issued.
18. **POWERS OF ANTI-CORRUPTION AGENCIES TO INVESTIGATIVE. *(U.K.C)*

In *Sankarankutty v State of Kerala (2000 (2) KLT 1)* the Division Bench of Kerala High Court held that the Parliament in its wisdom has conferred power on the State Government, as per the first proviso to S.17, to empower Police Officers not below the rank of Inspector of Police, for investigation of the offence under the Act. Thus the first proviso to S.17 is not in any way abridging or nullifying the operative portion of S.17 of the Act. Court held that only in lawful exercise of the powers conferred under the first proviso to S.17 that the State Government has issued the statutory notification No. 12094/C1/88/Vig. Thiruvananthapuram, 2nd March, 1993 as S. R. O. No. 790-93 authorising police officers not below the rank of an Inspector of Police to investigate any offence punishable under the P.C Act except offence referred to in Clause.(e) of sub-s.(1) of S.13 of the above said Act for which order from an officer not below the rank of a superintendent of Police is required.

19. **TENDER OF PARDON – *(R.M.P)*

Both Special Judge as well as Magistrate has concurrent jurisdiction to grant pardon during the investigation – Order granting pardon passed by Magistrate in good faith even after appointment of Special Judge under P.C. Act – Do not vitiate proceedings. 2014 Cr.L.J. 2482 (SC).

20. **FAIR INVESTIGATION A CONSTITUTIONAL RIGHT. *(U.K.C)*

In *Dharam Pal v State of Haryana and Others* (AIR 2016 Sc 618) the Apex Court held that 'State has a duty to enforce' the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers.

In *Babubhai v. State of Gujarat*, 2010 (12) SCC 254, it was held by the Apex Court that "Not only the fair trial but fair investigation is also part of constitutional rights guaranteed under Art.20 and Art.21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. Investigating agency cannot be permitted to conduct an investigation in tainted and biased manner. Where non - interference of the Court would ultimately result in failure of justice, the Court must interfere."
In *Pooja Pal v Union of India and Others* AIR 2016 SC 1345, the Apex Court reminded that ‘Criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.

Successful investigations are based on fidelity, accuracy, and sincerity in lawfully searching for the true facts of an event under investigation and on an equal faithfulness, exactness, and probity in reporting the results of an investigation. Modern investigators are persons who stick to the truth and are absolutely clear about the time and place of an event and the measurable aspects of evidence. They work throughout their investigation fully recognizing that even a minor contradiction or error may destroy confidence in their investigation. The joining of science with traditional criminal investigation techniques offers new horizons of efficiency in criminal investigation. New perspectives in investigation bypass reliance upon informers and custodial interrogation and concentrate upon a skilled scanning of the crime scene for physical evidence and a search for as many witnesses as possible. Mute evidence tells its own story in court, either by its own demonstrativeness or through the testimony of an expert witness involved in its scientific testing. Such evidence may serve in lieu of, or as corroboration of, testimonial evidence of witnesses found and interviewed by police in an extension of their responsibility to seek out the truth of all the circumstances of crime happening. An increasing certainty in solving crimes is possible and will contribute to the major deterrent of crime - the certainty that a criminal will be discovered, arrested and convicted.

In WP(C)No.4932 of 2016, High Court of Kerala on 08.07.2016 observed that the right to good governance is a fundamental right coming within the ambit of Article 21 of the Constitution of India and directed to register FIR and investigate .................. All are equal before law and nobody should be treated as more equals. In WP(C)No.31190 of 2016, WP(C)No.31205 of 2016 and Crl. MC No.5699 of 2016, the High Court of Kerala directed VACB shall investigate with open eyes, with open ears and with an open heart.
21. **APEX COURT DECISIONS ON ARREST/ REMAND UNDER PC ACT OFFENCE. *(B.M.A)*

In *Lalithakumari Vs Govt. of U.P and others 2013 KHC 552* the Hon'ble Supreme Court observed that "While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under the law, and there are several safeguards available against arrest."

In *Arnesh Kumar Vs State of Bihar and others 2014(8) SCC 273*, the Supreme Court held that no arrest should be made only because the offence is non-bailable and cognizable. Neither should arrest be made in a routine, casual and cavalier manner or on a mere allegation of commission of an offence made against a person. Arrest should only be made after reasonable satisfaction reached after due investigation as to the genuineness of the allegation.

The High Court of Chattisgarh in *Sudhir Kumar Bhole V. State of Chhattisgarh* (2015 KHC 5225) observed as follows:

"Further taking into account the severity of the punishment prescribed for the aforesaid offences and keeping in mind, the binding observations of their Lordships of the Supreme Court in aforesaid cases (supra), that corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the Prevention of Corruption Act, 1988 and further taking in view that corruption is really a human rights violations specially right to life, liberty, equality and non-discrimination and it is an economic obstacles to the realization of all human rights and further taking into consideration that charge – sheet is yet to be filed against the two co-accused persons, further considering the nature of accusation and gravity of offence, the applicants are charged which are extremely serious and such offences are alleged to have been committed by supplying sub-standard rice, that too, in the State of Chhattisgarh, which is traditionally known as Rice Bowl of India, therefore, in the considered opinion of this Court, it is not proper to order release of present applicants on regular bail for the reasons mentioned herein above. Accordingly, I hereby decline the prayer for bail made by the applicants".
22. CUSTODIAL INTERROGATION IN CORRUPTION CASES.
*(R.M.P)*

In *Sudhir v. State of Maharashtra and Another* (AIR 2015 SC 3665), the Apex Court considering the gravity of the offence, circumstances of the case, particularly, the allegations of corruption and misappropriation of public funds released for rural development, and further considering the conduct of the accused persons and the fact that the investigation is held up as the custodial interrogation of the accused could not be done due to the anticipatory bail, the Supreme Court held that the order issued by the High Court cancelling the anticipatory bail granted is proper.

In *State rep by the CBI v Anil Sharma* (AIR 1997 SC 3806), the Apex Court accepted the submission of the CBI that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is well ensconced with a favourable order under S.438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

In *S. Jagan Mohan Reddy v. CBI* reported (AIR 2013 SC 1933), the Apex Court in a P.C Act offence case, held as follows:

"Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the
accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of public / State and other similar considerations."

23. **INVESTIGATION & LEGAL OPINION- ROLE OF SUPERIOR OFFICER -*O.S*)

In **Vigilance & Anti-Corruption Bureau v. Neyyattinkara P.Nagaraj & others** 2015 (5) KHC 532

1. Power of the Court to examine case diary – At any stage from the filing of the report of Investigating Officer, till the stage of framing charges, to aid inquiry, Court has power to peruse factual report or scrutiny report, which forms part of case diary – To what extent case diary can be perused, discussed.

2. Director of Vigilance – Held has power to give instructions to the Investigating Officer, in the matter of investigation – But he has no unbridled power to direct Investigating Officer to file a final report in a particular manner – Vigilance Manual, Paragraph 72(1).

3. Superior Police Officer like Director of Vigilance has got the power to scrutinise the final report in the case, and pending orders by the Magistrate on such final report, he can order a further investigation in the matter.

4. Director of Vigilance cannot be found fault with in his obtaining the legal opinion from legal expert or experts.

5. Vigilance Manual – How far binding – Vigilance Manual holds good in the field of investigation, provided those provisions are not contrary to the provisions contained in the Cr.PC.

6. Director of Vigilance is given power to order registration of the Vigilance case – Said power is not contrary to provisions of Cr.PC, hence valid – Vigilance Manual, Paragraph 59(ii).

24. **COURT MONITORED INVESTIGATION.**

In **Sakiri Vasu v.State of U.P and others** (AIR 2008 SC 907 )the Apex Court held that the power to direct investigation u/s 156(3) of the CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation. Therefore, in appropriate cases, the victim, complainant or a witness can approach the court seeking necessary directions to the police and supervision of investigation.
25. NOTICE TO THE INFORMANT/VICTIM IN CASE OF REFER REPORT

In Bhagwant Singh v. Commissioner of Police and Another, AIR (1985) SC 1285, the Apex Court held that Magisterial vigil does not terminate on the filing of the police report on the conclusion of the investigation and the court is not bound to accept the results of an investigation conducted by the police. In the case the police conclude that no case is made out against the accused, the Magistrate has to issue a notice to the informant/victim and hear him out.

26. FURTHER INVESTIGATION ORDER BY COURT

Vinay Tyagi v Irshad Ali @ Deepak & Ors. (Reported in 2013(5) SCC 762) the Apex Court held that the Magistrate before whom a report under Section 173(2) of the Code is filed, is empowered in law to direct ‘further investigation’ and require the police to submit a further or a supplementary report. A three Judge Bench decision of Apex Court in the case of Bhagwant Singh’s case (AIR 1985 SC 1285) was followed in the judgment.

27. MALICIOUS PROSECUTION STATE AND OFFICERS RESPONSIBLE *(R.M.P)

In Ram Lakhan Singh (Dr.) v. State Government of Uttar Pradesh( 2015 KHC 4751). The Apex Court held that ‘until and unless we maintain a fine balance between prosecuting a guilty officer and protecting an innocent officer from vexatious, frivolous and mala fide prosecution, it would be very difficult for the public servant to discharge his duties in free and fair manner. The efficiency of a public servant demands that he should be free to perform his official duties fearlessly and without any favour. The dire necessity is to fill in the existing gap by protecting the honest officers while making the corrupt officers realize that they are not above law. The protection to an honest public servant is required not only in his interest but in the larger interest of society. This Court time and again extended assurance to the honest and sincere officers to perform their duty in a free and fair manner towards achieving a better society. In this case considering the age and trauma suffered by the petitioner who spent about 11 days in jail and fought the legal battle for about a period of 10 years before various forums and more particularly in the absence of any proved charges of corruption against the petitioner, Supreme Court found
that a lump sum amount of Rs.10 lakhs be awarded as compensation to the accused.

In *State of Gurarat v. Kishanbhai and Others* (2014 (1) KLT SN 61), the Apex Court had directed that every State should put in place a procedural mechanism by constituting a standing committee of senior officers of the police and prosecution departments to review all cases culminating in acquittal and to identify the erring officers in the investigation and prosecution for taking departmental action against such officers. The committee is also fastened with the responsibility of preparing training programmes for officials and crystallise or clear up mistakes committed during investigation, and/or prosecution, or both.

28. **PROSECUTOR HAS THE RIGHT AND AUTHORITY TO FILE S.173 (8) CrPC SEEKING FURTHER INVESTIGATION (*UKC*)**

In *Abdul Latheef and Others v. State of Kerala* (2014(3) KLT 905), the Division Bench of the Kerala High Court approved the decisions in *Babu V. State of Kerala*, 1984 Cr.I. 499 & *Ummer v. State of Kerala*, 2010 (1) KLT 963 and held that:-

A Prosecutor has a duty to the State, to the accused, and to the Court. The Public Prosecutor is at all times a minister of justice, though seldom so described. It is not the duty of the prosecuting counsel to secure a conviction, nor should any prosecutor even feel pride or satisfaction in the mere fact of success. A Public Prosecutor is expected to be impartial and unbiased and more so fair to the accused also who is facing trial. The Court held that if at all he has got any sustainable grounds that the investigation has not been conducted fairly, then he has to bring it to the notice of the appropriate authority and get appropriate orders to see that necessary steps are taken for further investigation of the crime. A Public Prosecutor, who notices serious lapse committed by the investigating agency in not conducting the investigation properly, can invite the attention of the Court in such case to seek order of further investigation.

29. **PUNISHMENT— LENIENCY & LEGALITY. *(U.K.C.)*

In *Shyam Lal Verma v Central Bureau of Investigation* (2014 (15) SCC 340) Apex Court held that Probation of Offenders Act is not applicable to offences under the Prevention of Corruption Act. Earlier decisions reported in AIR 2004 SC 2364 - State Through SP, New Delhi v. Ratan Lal Arora and - State Represented by Inspector of Police,
Pudukottai, T. N. v. A. Parthiban -AIR 2007 SC 51-were relied by the Apex Court.

In State of Rajasthan v. Jamil Khan (2013 (10) SCC 721) the Supreme Court held that 'Punishment has a penological purpose. Reformation, retribution, prevention, deterrence are some of the major factors in that regard. Parliament is the collective conscience of the people. If it has mandated a minimum sentence for certain offences, the Government being its delegate, cannot interfere with the same in exercise of their power for remission or commutation. Neither Section 432 nor Section 433 of Cr.PC hence contains a non-obstante provision. Therefore, the minimum sentence provided for any offence cannot be and shall not be remitted or commuted by the Government in exercise of their power under Section 432 or 433 of the Cr.PC. Wherever the Indian Penal Code or such penal statutes have provided for a minimum sentence for any offence, to that extent, the power of remission or commutation has to be read as restricted; otherwise the whole purpose of punishment will be defeated and it will be a mockery on sentencing.'

In Narmada Bai v. State of Gujarat and Others (AIR 2011 SC 1804) the Apex Court emphasized that if the majesty of the rule of law is to be upheld, it is to be ensured that the guilty are punished in accordance with law notwithstanding their status and authority which they might have enjoyed.

30. DIRECTION U/S. 91 CRPC TO PRODUCE DOCUMENT CANNOT BE ISSUED AGAINST AN ACCUSED PERSON. (U.K.C)

In Gopalakrishnan Nayanar v Sasidharan Nambar (1996 91 KLT 83), the Division Bench of the Kerala High Court following the decision of the Apex Court in Balkishan v. State of Maharashtra (AIR 1981 SC 379), held that there can be no order under section 91 Crpc directing a person against whom a formal accusation is brought into existence by lodging of an F.I.R. or a formal complaint to the appropriate authority or court, accusing him of the commission of a crime which, in the normal course, would result in his prosecution. Such direction will amount to testimonial compulsion under clause (3) of Art.20 of the constitution of India.
31. COURT INTERVENTION FOR CAUSE PRODUCTION OF DOCUMENT DURING INVESTIGATION. (*UKC)

In State of Orissa v DebendraNath Padhi (AIR 2005 SC 359), the Apex Court has clarified the stages where direction for cause production of documents under section 91 Crpc can be issued. The Court held that 'Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code'. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production......When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the Court for summoning and production of a document as may be necessary at any of the stages mentioned in the section......Under S.91 summons for production of document can be issued by Court and under a written order an officer in charge of police station can also direct production thereof. ......S.91 presupposes that when the document is not produced process may be initiated to compel production thereof'.

32. JUDICIAL INTERFERENCES AT INITIAL OR INTERLOCUTORY STAGES OF CRIMINAL CASES RESULTING DELAY. (U.K.C)

In Hegde v Bangarappa (reported in 1995 (4) SCC-41, the Hon’ble Supreme Court borrowing the words of Justice Krishna Iyer in Special Courts Bill,1978 (1979(1) SCC 380, said that ‘..It is common knowledge that currently in our country criminal courts excel in slow motion. The procedure is dilatory, the dockets are heavy, even the service of process is delayed and, still more exasperating, there are appeals upon appeals and revisions and supervisory jurisdictions, baffling and baulking speedy termination of prosecutions. .... In the latter judgment Hon’ble Apex Court further added that...’The slow motion becomes much slower motion when politically powerful or rich and influential persons figure as accused. FIRs are quashed. Charges are quashed. Interlocutory orders are interfered with. At every step, there will be revisions and applications for quashing and writ petitions. In short, no progress is ever allowed to be made. And if ever the case reaches the stage of trial after all these interruptions, the time would have taken its own toll: the witnesses are won over; evidence
disappears; the prosecution loses interest -- the result is an all too familiar one'.

33. **NON-PROSECUTION OF P.C ACT OFFENCES- EFFECT IN SOCIETY. (U.K.C)**

In *Niranjan Hemchandra Sashittal and Another v State of Maharashtra* AIR 2013 SC 1682, the Apex Court observed that 'It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. **It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered.** The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality. Therefore, the relief for quashing of a trial under the 1988 Act has to be considered in the above backdrop'.

The above judgements are indicative of the range of aspects to be studied by the anti-corruption agency, and the operating procedure while implementing the substantive and procedural law in anti-corruption actions by VACB. This is issued for using law to maximum effect in achieving 'Zero tolerance to corruption' in our society.

\[23/12/16\]
Dr. Jacob Thomas

To

1) ADGP and all officers of VACB for compliance
2) LA and ALAs for further updations on case law
3) Manager, AA, AO, all Superintendents for guidance
4) R & T Wing
5) M-Cell
6) Computer Cell to publish in VACB website