(1995) 04 MAD CK 0089

Madras High Court

Case No: None

Dr. J. Jayalalitha		APPELLANT
	Vs	
Dr. M. Channa Reddy, Governor of Tamil Nadu and Others		RESPONDENT

Date of Decision: April 27, 1995

Acts Referred:

- Constitution of India, 1950 - Article 361
- Criminal Procedure Code, 1973 (CrPC) - Section 197
- Penal Code, 1860 (IPC) - Section 169
- Prevention of Corruption Act, 1988 - Section 19

Citation: (1995) 1 LW 525 : (1995) 2 MLJ 187 : (1995) WritLR 323

Hon'ble Judges: Srinivasan, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Srinivasan, J.
The petitioner is the Chief Minister of the State of Tamil Nadu. The first respondent is the Governor of the State. The fourth

respondent presented a petition on 2.11.1993 to the first respondent praying for sanction to prosecute the petitioner u/s 197 of the Code of

Criminal Procedure and Section 19 of the Prevention of Corruption Act on allegations of corruption and criminal misconduct. As no orders had

been passed on the said petition, the fourth respondent filed W.P. No. 7996 of 1994 in this Court for issue of a writ of mandamus to direct the first

respondent, who was described as ""the Deciding Authority and His Excellency the Governor of Tamil Nadu, Madras"" to grant necessary sanction

for prosecuting the petitioner herein, who was the second respondent therein, under the provisions of Section 19 of the Prevention of Corruption

Act, 1988. The third respondent in that writ petition was the State of Tamil Nadu represented by the Chief Secretary to Government. The court

entertained a doubt as regards its maintainability and ordered notice of motion. The three respondents in the said writ petition contended that the

same was not maintainable and relied upon the judgment of a Division Bench of this Court, to which one of us was a party, in Dravida Munnetra

Kazhagam, etc. v. The Governor of Tamil Nadu and Ors. (1994) 1 L.W. 145. A learned Judge of this Court passed an order on 22.9.1994

dismissing the said writ petition as not maintainable in view of the ruling of the Division Bench referred to above.

2. The fourth respondent filed SLP No. 17944 of 1994 in the Supreme Court of India against the said order. The Supreme Court ordered notice

in that petition and on behalf of the first respondent herein an affidavit was filed before the Supreme Court by his Secretary praying for time till

31.5.1995 to take a decision on the petition given to him by the fourth respondent herein. Referring to the said affidavit the Supreme Court passed

the following order on 20.2.1995:

Since the affidavit has been filed on behalf of the Governor by his Secretary asking for time till 31.5.1995 for taking decision on the application

made by the petitioner, the matters are adjourned to 10.7.1995.

3. Subsequently, the first respondent passed an order on 25.3.1995 according sanction to the fourth respondent to prosecute the petitioner for

offences u/s 169, Indian Penal Code and Section 13(1)(d) and (e) of the Prevention of Corruption Act. The said order reads as follows:

Whereas, Dr. Subramanian Swamy residing at No. 5, Pandi Pant Marg, New Delhi-110 001, presented a petition on 2.11.1993 asking for

sanction to prosecute the Chief Minister of Tamil Nadu J. Jayalalitha u/s 197 of Criminal Procedure Code and u/s 19 of Prevention Corruption

Act, regarding allegations of corruption and criminal misconduct;

2. Whereas subsequently he has submitted detailed material claiming to be proof in support of the allegations in the form of 2 bound volume.

3. Whereas the said Subramanian Swamy has made the allegations of corruption in the following matters:

(a) Abuse of tender process in respect of import of coal specifically charging Corruption;

(b) Purchase of Government land from TANSI in the name of Jaya publications for a low price alleging that the Chief Minister is a partner along

with Smt. Sasikala.

4. Whereas in respect of the allegation about the import of coal to the effect that the contract has been given to M/s. Alagendran and Brothers

International Private Limited and has produced the notings of the Public Works Department Secretary and the noting of Secretaries of various

departments;

5. Whereas in respect of the purchase of TANSI Land to show that it is criminal misconduct various documents starting from the partnership deed

of Jaya Publications showing Chief Minister J. Jayalalitha as partner, the agreement of purchase, sale deed and particulars of guidelines to show

that properties worth Rs. 4.42 crores has been purchased for Rs. 1.82 crore have been produced;

6. Whereas Subramanian Swamy has alleged that this will amount to offence under Sections 161, 169, I.P.C. and Section 13(1)(d) and (e) of

Prevention of Corruption Act;

7. Whereas I have perused the allegations made and the material plea in detail and carefully examined all the materials placed before me in regard

to the allegations, I, M. Chenna Reddy having perused the material find a case has been made out for according sanction for prosecution of Chief

Minister, J. Jayalalitha for the offences alleged;

I hereby accord sanction on the petition of Dr. Subramanian Swamy to prosecute Chief Minister J. Jayalalitha for offences u/s 169, I.P.C. and

Section 13(1)(d) & (e) of Prevention of Corruption Act.

4. Challenging the validity of the said order, the petitioner has filed this writ petition with a prayer to issue a writ of certiorari calling for the records

of the first respondent in respect of the said order arid quash the same. The second respondent in this writ petition is the Secretary to the Governor

of State of Tamil Nadu and the third respondent is the State of Tamil Nadu represented by its Chief Secretary. When the petition was posted for

admission in the usual course before a learned single Judge of this Court notice was taken by a counsel on behalf of respondents 1 and 2. The

fourth respondent took notice as party-in-per-son. After hearing Senior Counsel for the petitioner, learned Counsel for respondents 1 and 2 and

the fourth respondent the learned Judge passed an order on 6.4.1995 expressing his opinion that in view of the importance of issues involved, the

matter should be posted before a Bench of two Judges for hearing and determination. He directed the papers to be placed before the Hon''ble the

Chief Justice who in turn constituted this Bench for hearing the matter.

5. In view of the earlier Judgment of the Division Bench of this Court in Dravida Munnetra Kazhagam v. The Governor of Tamil Nadu (1994) 1

L.W. 145, in which it has been held that a writ petition against the Governor of a State is not maintainable, we requested the senior counsel for the

petitioner to address the court first on the question of maintainability of the writ petition. It was agreed by all counsel appearing for the parties and

the fourth respondent that arguments would, in the first instance, be confined to the maintainability of the writ petition and if the court holds the

petition to be maintainable, further arguments could be advanced. When the matter was heard by us, the third respondent, i.e., the State

Government had also entered appearance and a Senior Counsel advanced arguments on its behalf. We have also made it clear in the course of

arguments that for the purpose of deciding the maintainability of the writ petition, we have to proceed as if the averments found in the affidavit filed

in support of the writ petition are true.

6. Before proceeding further, it will be useful to refer to the facts and the ratio of the Judgment of the Division Bench rendered earlier in the

Dravida Munnetra Kazhagam v. The Governor of Tamil Nadu (1994) 1 L.W. 145. The Dravida Munnetra Kazhagam filed an application on

16.9.1992 before the then Governor of Tamil Nadu requesting him to accord sanction for the prosecution of the Chief Minister of the State (the

petitioner herein) and other Ministers mentioned therein u/s 19 of the Prevention of Corruption Act, 1988 and Section 197 of the Criminal

Procedure Code, 1973. The Governor through his Secretary sent a communication dated 13.11.1992 informing the applicant before him that the

application was considered and no credible basis for a case to sanction prosecution or to comply with the other requests was found and, therefore,

rejected the application. Challenging the said communication, the Kazhagam filed Writ Petition No. 1789 of 1993. The first respondent in that writ

petition was the Governor of Tamil Nadu, the second respondent being his Secretary. The third respondent was the State of Tamil Nadu

represented by its Secretary Public Department. The Division Bench of this Court, to which one of us was a party; dismissed the writ petition as

not maintainable by order dated 13.9.1993, relying upon the provisions of Article 361 of the Constitution of India. The relevant case law was

considered in detail and in particular reliance was placed on the judgment of a Full Bench of this Court in Mathialagan v. Governor of Tamil Nadu

(1973) 1 M.L.J. 131, in which the following passage occurs:

Neither the Supreme Court in this case, nor the other cases we referred to of the High Courts, has held that the personal immunity afforded by

Article 361(1) to the Governor did not avail where his bona fides were questioned. They have not held that where his bona fides are questioned,

he can personally be called to enter his defence. In our opinion, his personal immunity extends to such a case as well

7. Though the ""petitioner was not eo nomine party to the said proceeding; she was impleaded as the second respondent in the writ petition filed by

the fourth respondent in W.P. No. 7996 of 1994 and she is also a party to SLP No. 17944 of 1994. Thus being aware of the ruling of the Division

Bench against the maintainability of a writ petition against Governor, in view of the provisions of Article 361 of the Constitution of India, the

petitioner has in her affidavit filed in support of the present writ petition made averments on the one hand to distinguish the present case from that

dealt with by the Division Bench in the aforesaid case and on the other to indirectly contend that the ruling of the Bench is not good law. At the

time of arguments, learned senior counsel for the petitioner was more keen on distinguishing the earlier ruling and contending that it is not applicable

to the present case, though to some extent submitted that it required reconsideration in view of the ruling of the Supreme Court in S.R. Bommai

and others Vs. Union of India and others etc. etc., .

8. Before proceeding to consider the contentions urged before us on behalf of the parties, we are unable to restrain ourselves from placing on

record our displeasure at some of the disturbing features present in this case:

(a) The affidavit of the petitioner does not. confine itself to the facts known to the petitioner, but it contains arguments on questions of law including

interpretation of the Constitution of India. The practice of putting propositions of law into the mouth of the party and stating them in the affidavit of

the party has been repeatedly deprecated by this Court as well as the Supreme Court. Order 19, Rule 3 of the CPC enjoins that affidavit shall be

confined to such facts as the deponent is able, on his own knowledge to prove. Even assuming that the petitioner being the holder of a high

Constitutional office is entitled to state propositions of law in her affidavit, we are disturbed by the fact that the petitioner has, after making a

reference expressly to the judgment of the Supreme Court in State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, , proceeded to urge

in the subsequent paragraphs a proposition directly contrary to the ruling of the Supreme Court in the said case. It is certainly not open to any

petitioner, however high his or her position be, to canvass the correctness of a judgment of the Supreme Court before this Court and that too in an

affidavit.

(b) We ate not happy that respondents 1 and 2 have entered appearance even before the writ petition is admitted. They are not private individuals

and they could have well waited for a notice from the court, if the same is ordered.

(c) We are unable to appreciate how the State Government has entered appearance at this stage and taken a stand supporting the petitioner. One

of the contentions raised by the petitioner in her affidavit is that the first respondent while granting sanction u/s 19 of the Prevention of Corruption

Act is functioning only as the State Government. The Explanation given by learned senior counsel for the State Government is that the State

Government will face practical and legal difficulties in implementing the impugned order of the first respondent. If that is so, the function of the Chief

Secretary, who is representing the State Government is only to approach the first respondent and get clarifications. At any rate, it would have been

much better if the State Government had waited till this Court decided to entertain the writ petition before entering the fray and joining hands with

the petitioner;

9. Now we proceed to consider the contentions of learned senior counsel for the petitioner. We have already referred to the fact that the judgment

of the Division Bench in Dravida Munnetra Kazhagam case (1994) 1 L W. 145, is based on the earlier rulings on the subject and in particular the

dictum of the Full Bench of this Court in Mathialagan''s case (1973) 1 M.L.J. 131. No subsequent decision, either of this Court or of the Supreme

Court excepting the judgment in S.R. Bommai and others Vs. Union of India and others etc. etc., has been brought to our notice to support the

contention that the earlier ruling of the Bench requires reconsideration. It is the argument of learned senior counsel for the petitioner that a perusal

of the facts in S.R. Bommai and others Vs. Union of India and others etc. etc., and the ruling of the Supreme Court therein will show that the first

respondent does not enjoy absolute immunity under Article 361 of the Constitution of India.. Our attention is drawn to paragraphs 122 and 123 in

which Sawant, J. has set out the chronology of events. It is seen from the report that the Supreme Court passed an order on September 6, 1991

staying the operation of the orders of the Speaker of Meghalaya Legislative Assembly dated 7 and 17.8.1991 in respect of four of the M.L.As.

out of five M.L.As. disqualified by him. However, the Speaker issued a press statement declaring that he did not accept any interference by any

court with his order of August 17, 1991. The Governor of the State prorogued the Assembly by his Order dated September 8, 1991, but the

Assembly was convened on October 8, 1991. On that date, the Supreme Court had passed another order directing that all authorities of the State

should ensure the compliance of the Court''s interim order of September 6, 1991. In spite of that, the Speaker did not obey that order and

proceeded as if his earlier order disqualifying the MLAs was in force. On October 9, 1991, the Governor wrote a letter to the Chief Minister

asking him to resign in view of what had transpired in the session on the previous day and observed in that letter that the non-cognizance by the

Speaker of the Supreme Court''s orders was a matter between the Speaker and the Court. The Chief Minister moved the Supreme Court against

the letter of the Governor and on October 9, 1991 the Court asked the Governor to take into consideration its earlier orders and votes cast by the

four independent M.L.As., before taking any decision on the question whether the Government had lost the motion of confidence. In spite of that,

the President on October 11, 1991 issued Proclamation under Article 356(1) of the Constitution. The Supreme Court by an order of October 12,

1991, set aside the order of the Speaker dated August 17, 1991. But, both the Houses of Parliament approved the Proclamation issued by the

President. After referring to the facts, the court said in paragraph 123:

The unflattering episode shows in unmistakable terms the Governor''s unnecessary anxiety to dismiss the Ministry and dissolve the Assembly and

also his failure as a constitutional functionary to realise the binding legal consequence of and give effect to the orders of this Court. What is worse,

the Union Council of Ministers also chose to give advice to the President to issue the proclamation on the material in question. It is not necessary to

comment upon the validity of the proclamation any further save and except to observe that prima facie the material before the President was not

only irrational but motivated by factual and legal mala fides. The proclamation was, therefore, invalid.

Our attention is also drawn to paragraph 281, wherein Jeevan Reddy, J. has dealt with the words ""provisions of this Constitution"" occurring in

Article 356(1) of the Constitution.

10. We are unable to accept the contention of the petitioner''s senior counsel. The Supreme Court had no necessity to consider the immunity of the

Governor under Article 361 of the Constitution of India, in that judgment. The full cause title of the case is not available in the law report. It is not

known whether the President of India or the Governors of the concerned States were impleaded as parties. In any event, the judgment does not

refer to the provisions of Article 361 of the Constitution and the scope thereof. In so far as the Governor of Meghalaya is concerned, it is quite

obvious that the Court rested its conclusion on the circumstance that its earlier orders which were binding on the Governor had not been obeyed

by him in spite of an express direction issued by the court. In fact, reference is made by K. Ramaswamy, J. in paragraph 205 of the judgment to

the provisions of Article 142 of the Constitution, and the power given to the Supreme Court to make any necessary order ""for doing complete

justice in any cause or matter pending before it"", which shall be enforceable throughout the Territory of India in such manner as prescribed by or

under any law made by Parliament subject to such law. In paragraph 403, Jeevan Reddy, J. has referred to Article 144 of the Constitution and the

duty of all authorities civil and judicial in the territory of India to act in aid of the Supreme Court and its orders. In paragraphs 238 and 239 K.

Ramaswamy, J. has pointed out that while interpreting the Constitution of India, the doctrine of casus omissus has no application. It is also pointed

out that where the language of a statute is clear and unambiguous, the doctrine will not apply. The language of Article 361 of the Constitution is

unambiguous and it is absolute in its terms. It makes no distinction between bona fide and mala fide acts of the Governor. As regards the scope of

judicial review, Jeevan Reddy, J. in paragraph 331, said:

Regarding the scope and reach of judicial review, it must be said at the very outset that there is not, and there cannot be, a uniform rule applicable

to all cases. It is bound to vary depending upon the subject matter, nature of the right and various other factors.

It follows that the course adopted by the Supreme Court, having regard to the facts and circumstances in that case, cannot be adopted by this

Court in the present case. It is well settled that this Court is not entitled to do what the Supreme Court does but is bound to follow that the

Supreme Court says.

11. It is also to be noted that the subject-matters of challenge in S.R. Bommai and others Vs. Union of India and others etc. etc., , were the

proclamations issued by the President of India under Article 356 of the Constitution. Our attention is drawn to the distinction between the

provisions of Article 74 and Article 163 of the Constitution. While under Article 74 the President shall, in the exercise of his functions, act in

accordance with the advice of the Council of Ministers with the Prime Minister at the head, under Article 163, an exception is carved out in so far

the Governor is by or under the Constitution required to exercise his functions in his discretion.

12. Sanction to prosecute the Chief Minister is the exclusive function of the Governor to be exercised by him in his discretion. Vide: State of

Maharashtra Vs. Ramdas Shrinivas Nayak and Another, . It is erroneous to say that the view of the Supreme Court was based on a concession

made by counsel. A perusal of the relevant part of the judgment shows that the court has expressed its opinion that the said concession was rightly

made.

13. Hence, we hold that nothing has been placed before us to warrant reconsideration of the earlier ruling of the Division Bench in Dravida

Munnetra Kazhagam v. The Governor of Tamil Nadu (1994) 1 L.W. 145.

14. The second contention of learned senior counsel for the petitioner is that the ruling of the Bench in the earlier case will have no application here

in as much as the subject-matter of challenge is different in content and nature. According to him, an order refusing to grant sanction stands on a

different plane from an order sanctioning prosecution. It is argued that while the order of refusal does not affect he rights of any party, the order of

sanction has very serious consequences and affects the fundamental rights of the petitioner. It is also submitted that the petitioner''s rights under

Article 21 of the Constitution are in jeopardy as she is made to face a prosecution which will inter alia affect her reputation to a great extent.

Learned counsel has gone to the extent of contending that it will be against public interest for a Governor to sanction prosecution of the Chief

Minister of a State and in such cases the immunity provided in Article 361 will not protect the Governor or his order. It is the contention of leaned

counsel that having regard to the state of affairs in the political scenario, a judicial safeguard is necessary and the Doctrine of Necessity should be

invoked by the court in this matter. Reliance is placed on the observations of the Supreme Court in In re. Under Article 143, Constitution of India

In the matter of: Under Article 143 of the Constitution of India, and submitted that the court is requested to examine whether the fundamental rights

of the petitioner are violated by the impugned order. It is submitted that the first respondent has passed an order violating the rights guaranteed to

the petitioner in the Constitution without any investigation and without any material before him. The action of the first respondent being mala fide,

the Court is entitled to find out whether there was any material before him, whether he applied his mind to it and whether he was satisfied as to the

existence of a prima facie case against the petitioner.

15. Our attention is drawn to State of Punjab Vs. Satya Pal Dang and Others and Baldev Parkash and Others, , wherein the court examined the

facts and held that the Governor had not acted mala fide. Reliance is also placed on P. Sirajuddin, etc. Vs. State of Madras, etc., , wherein the

Supreme Court has pointed out the serious consequences of a prosecution against high officials in that case - a Chief Engineer - and the necessity

to follow strictly the procedure prescribed by law. Reference has been made to Kehar Singh and Another Vs. Union of India (UOI) and Another,

, wherein the extent of power of the President of India to grant pardon under Article 74 of the Constitution was considered by the court.

16. Strong reliance is placed on the following passage in AIR 1948 82 (Privy Council) :

It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since Clause 23 does not require the

sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offense charged are not shown on the face of the

sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. The sanction to

prosecute is an important matter: it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute

discretion to grant or withhold their sanction. They are not, as the High Court seem to have thought, concerned merely to see that the evidence

discloses a prima facie case against the person sought to be prosecuted. They can refuse sanction on any ground which commends itself to them,

for example that on political or economic grounds they regard a prosecution as inexpedient. Looked at as a matter of substance it is plain that the

Government cannot adequately discharge the obligation of deciding whether to give or withhold a sanction without a knowledge of the facts of the

case.

17. Finally he referred to the judgment of the Supreme Court in Jaswant Singh Vs. The State of Punjab, and placed reliance on the following

passage:

It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the

circumstances of the case sanctioned the prosecution, and therefore, unless the matter can be proved by other evidence, in the sanction itself the

facts should be referred to indicate that the sanctioning authority had applied its mind to the facts"" and circumstances of the case.

18. We are not able to accept the above contentions. The nature and effect of a sanction order have been clearly defined by the Supreme Court

on more than one occasion. In Rameshwar Bhartia Vs. The State of Assam, , the court pointed out the distinction between ""sanction to prosecute

and ""direction to prosecute"" in the following passage:

(11) In both cases of sanction and direction, an application of the mind is necessary, but there is this essential difference that in the one case there is

a legal impediment to the prosecution if there be no sanction, and in the other case, there is a positive order that the prosecution should be

launched. For a sanction, all that is necessary to be satisfied about is the existence of a prima facie case. In the case of a direction, a further

element that the accused deserves to be prosecuted is involved. The question whether a Magistrate is personally interested or not has essentially to

be decided on the facts in each case. Pecuniary interest, however small, will be a disqualification, but as regards other kinds of interest, there is no

measure or standard except that it should be substantial one giving rise to a real bias, or a reasonable apprehension on the part of the accused of

such bias. The maxim ""Nome Debt Esses Judex In Propria Sua Causa"" applies only when the interest attributed is such as to render the case his

own causa. The fulfilment of a technical requirement imposed by a statute may not, in many cases, amount to a mental satisfaction of the truth of the

facts placed before the officer. Whether sanction should be granted or not may conceivably depend upon considerations extraneous to the merits

of the case. But, where prosecution is directed, it means that the authority who gives the direction is satisfied in his own mind that the case must be

initiated. Sanction is in the nature of a permission, while a direction is in the nature of a command.

[Italics ours]

19. In Biswabhusan Naik Vs. The State of Orissa, , the court after referring to the dictum of the Privy Council in AIR 1948 82 (Privy Council)

said:

(6) The judgment of the Judicial Committee relates to Clause 23 of the Cotton Cloth and Yarn (Control) Order, 1943 but the principles apply

here. It is no more necessary for the sanction under the Prevention of Corruption Act to be in any particular form or in writing or for it to set out

the facts in respect of which it is given than it was under Clause 23 of the Order-which their Lordships were considering. The desirability of such a

course is obvious because when the facts are not set out in the sanction proof has to be given ""aliunde that sanction was given in respect of the

facts constituting the offence charged but an omission to do so is not fatal so long as the facts can be, and are, proved in some other way.

20. There can be no dispute that sanction to prosecute is only an administrative order and does not by, itself affect the rights of any party. As early

as in 1903 an eminent Judge of this Court, Bhashyam Ayyangar, J. dealt with a sanction u/s 197, CrI.P.C. and pointed out the distinction between

the same and the sanction by a Court u/s 195 of the Code in In the Matter of Kalagaya Bapiah ILR Mad. 54. The relevant passage reads thus:

The sanction accorded by Government u/s 197 cannot be held to be null and void for the reason that no notice was given to the accused to show

cause why such sanction should not be given. It is a matter left entirely to the discretion of Government whether such opportunity should be given

to the person concerned before sanctioning his prosecution and the criminal court before which he is prosecuted is not an appellate authority over

Government in the matter of the sanction. There is a marked distinction between the classes of offences dealt with in Section 195, clauses l(b) and

(c), and those dealt with in Section 197. A court granting sanction u/s 195, clauses (b) and (c) does so in connection with offences committed in or

in relation to any proceeding in such court and the court therefore, acts in its judicial capacity in granting the sanction upon legal evidence. But the

Government in according or withholding sanction u/s 197 for the prosecution of a public servant in respect of an offence alleged to have been

committed by him as such public servant - acts purely in its executive capacity and the sanction need not be based upon legal evidence. The

Government is certainly not acting in a judicial capacity nor exercising a judicial function in authorising or sanctioning a prosecution under Sections

196 and 197 of the Criminal Procedure Code, and there is nothing in the signification of the word ''sanction'' to ''import'' as the Sessions Judge

supposed ""a judicial element into the act of the executive"" and the ruling of the Full Bench in Queen Empress v. Sheik Beari ILR Mad. 232

referred to by the Sessions Judge has no application whatever to the present case.

21. In Munagala Venkateswara Rao Vs. Mohammad Mohibulla Saheb, , it was held that the order of sanction need not set out the reasons for the

sanction and the object of sanction is nothing more than to ensure the discouragement of frivilous, doubtful and impolitic prosecutions.

22. In M.K. Mohan Raj v. State represented by Inspector of Police, Vigilance and Anti Corruption, Cuddalore 1986 L.W. 412, it was held that

an order u/s 6 of the Prevention of Corruption Act, 1947 is only an administrative order and cannot be called as a quasi-judicial order. The

contention of the petitioner that the order involved civil consequences was rejected. The Court referred to the decision in Surjit Singh v. State of

Punjab ILR 1980 P & H. 11, wherein the same view had been expressed.

23. In State of Bihar and Another Vs. P.P. Sharma, IAS and Another, , the Supreme Court put its seal of approval on the proposition that order

sanctioning prosecution is only ""an administrative act and not a quasi-judicial nor a lis involved."" The court said that the order need not contain

reasons and a proper applications of mind to the existence of a prima facie evidence of the commission of the offence is only a precondition so

grant or refuse to grant sanction. In the same judgment the Court has rejected the argument that filing F.I.R. violated Article 21 of the Constitution

in the following words:

Equally laying the information before the Station House Officer of the Commission of cognizable crime merely sets the machinery of the

investigation in motion to act in accordance with the procedure established by law. The findings of the High Court, therefore, that the F.I.R.

charge-sheet violates the constitutional mandate under Article 21 is without substance.

24. Thus, the settled position in law is that an order sanctioning prosecution does not by itself affect the right of any person and much less

fundamental right under Article 21 of the Constitution. The question of violation of Article 21 of the Constitution does not arise at this stage at all. If

that argument is accepted there can be no prosecution of any citizen in this country. The Supreme Court has repeatedly rejected such arguments.

In State of Maharashtra Vs. Captain Buddhikota Subha Rao, , the court has pointed out that personal liberty of an individual can be curbed by

procedure established by law and the Code of Criminal Procedure is one such procedural law which permits curtailment of liberty of anti-social

and anti-national elements.

25. The fact that the first respondent has passed the impugned order does not mean that he is satisfied that the charges made against the petitioner

by the fourth respondent have been proved. The impugned order does not cast any stigma on the petitioner. The fourth respondent is yet to lodge

a complaint with the Special Court and at this; stage, Article 21 of the Constitution of India does not come in the picture.

26. At this stage, allegations of mala fides against the first respondent have no meaning and the court cannot under Article 226 of the Constitution

entertain the same. In State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Supreme Court stated the law as follows:

114. No doubt, there was no love lost between Ch. Bhajan Lal and Dharma Pal. Based on this strained relationship, it has been then emphatically

urged by Mr. K. Parasaran that the entire allegations made in the complaint due to political vendetta are not only scurrilous and scandalous but also

tainted with mala fides, vitiating the entire proceedings. As it has been repeatedly pointed out earlier the entire matter is only at a premature stage

and the investigation is not yet proceeded with except some preliminary effort taken on the date of the registration of the case, that is, on

21.11.1987. The evidence has to be gathered after a thorough investigation and placed before the court on the basis of which alone the court can

come to a conclusion one way or the other on the plea of mala fides. If the allegations are bereft of truth and made maliciously, we are sure, the

investigation will say so. At this stage, when there are only allegations and recriminations but no evidence, this Court cannot anticipate the result of

the investigation and render a finding on the question of mala fides on the materials at present available. Therefore, we are unable to see any force

in the contention that the complaint should be thrown over-board on the mere unsubstantiated plea of mala fides. Even assuming that Dharam Pal

has laid the complaint only on account of his personal animosity that, by itself, will not be a ground to discard the complaint containing serious

allegations which have to be tested and weighed after the evidence is collected. In this connection the following view expressed by Bhagwati, C.J.,

in Sheonandan Paswan Vs. State of Bihar and Others, , may be referred to:

It is a well established proposition of law that a criminal prosecution if otherwise justifiable and based upon adequate evidence does not become

vitiated on account of mala fides or political vendetta of the first informant or the complainant.

Beyond the above, we do not wish to add anything more.

27. There is no merit in the contentions that public interest will suffer if the Chief Minister of a State is prosecuted. The Supreme Court said thus in

Kazi Lhendun Dorji v. Central Bureau of Investigation 1994 S.C.C. 873:

Having regard to the seriousness of the allegations of corruption that have been made against a person holding public office of Chief Minister in the

State which have cast a cloud on his integrity, it is of utmost importance that the truth of these allegations is judicially determined. Such a course

would subserve public interest and public morality because the Chief Minister of a State should not function under a cloud. It would also be in the

interest of respondent 4 to have his honour vindicated by establishing that the allegations are not true. The cause of justice would, therefore, be

better served by permitting the petitioner to agitate the issues raised by him in the writ petition than by non-suiting him on the ground of laches.

28. It is worthwhile in this connection to recall what the Supreme Court said in Kartar Singh v. State of Punjab in para 381:

Equally true that in the midst of clash of interests, the individual interest would be subservient to social interest, yet so long as ubi, jus, ebi remedium

is available the procedure prescribed and the actions taken thereon by the law enforcement authority must meet the test of the Constitutional

mandates.

29. The fourth respondent has referred to the judgment of the Supreme Court in Janata Dal Vs. H.S. Chowdhary and Others, and read out

paragraph 135 wherein the court has observed that the High Court being the highest court of a State should normally refrain from giving a

premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and

produced before court and the issues involved, whether factual or legal, are of great magnitude and cannot be seen in their true perspective without

sufficient material. Our attention is also drawn to the latest order of the Supreme Court in Director, Central Bureau of Investigation and Ors. v.

Niyamavedi SLP (Crl.) No. 942 of 1995 dated 5.4.1995. It is observed therein that ordinarily the court should refrain from interfering at a

premature stage of the investigation as that may derail the investigation and demoralise the same. The Court said:

Of late, the tendency to interfere in the investigation is on the increase and courts should be wary of its possible consequences.

We agree with the contention of the fourth respondent that the present proceeding is premature. He referred to the judgment of the Supreme Court

in State of West Bengal and another Vs. Mohammed Khalid and others, , wherein the court observed that the High Court has to necessarily

accept the averments in the order of sanction on their face value. In the view we have taken under Article 361 of the Constitution, there is no

question of our considering the acceptability of the averments in the impugned sanction order. The fourth respondent also dealt with the objects of

the Prevention of Corruption Act as enunciated in K. Veeraswami Vs. Union of India (UOI) and Others, . Though it is not necessary for us to

consider the objects of the said Act in these proceedings, we would like to point out that the Supreme Court observed in that judgment that the

said Act was intended to cover all categories of public servants.

30. Major part of the arguments advanced by learned senior counsel for the petitioner was an attack on the validity of the order of the first

respondent on different grounds. We do not propose to consider any of them here, in the view we have taken on the maintainability of the writ

petition. Suffice it to point out that the petitioner has ample opportunity to raise all those contentions in the proceedings under the Act, if initiated

pursuant to the sanction granted by the first respondent. As at present, this petition is premature and not maintainable. We do not accept the

contention that the writ petition could be admitted in order that the court mould the relief ultimately, as the fundamental rights of the petitioner are

affected. We have already found that the order of sanction does not in any manner affect any of the fundamental rights of the petitioner.''

31. Learned Senior Counsel quoted from Bhagavad-Gita and said that disgrace is worse than death to a man of honour:

Sloka 34 in Chapter II).

The disgrace referred to in the sloka is one arising out of failure to do one''s duties. It does not mean that infamy or ignominy will arise out of

allegations. That can arise only on proof of the allegations. There is no question of any disgrace to the petitioner at this stage, as the charges of

corruption against her are only in the stage of allegations. Mere allegations will not cause any disgrace. Hence, we do not accept the contention that

the impugned order sanctioning prosecution against the petitioner has brought disgrace to her.

32. Consequently, we hold that the present case will fall squarelly under the ruling of the Division Bench in Dravida Munnetra Kazhagam case

(1994) 1 L.W. 143 and, therefore, not maintainable.

33. Learned senior counsel for the State Government has argued that the writ petition has to be admitted as very important questions of law have

arisen by the grant of sanction to prosecute even before an investigation into the allegations against the petitioner has been made. According to him,

such questions arise in the case de hors the first respondent and the court has to decide the same. It is submitted by him that instead of the present

prayer in the writ petition if the petitioner had prayed for issue of a mandamus forbearing the State Government from implementing or giving effect

to the impugned order of sanction, it could have been filed without the first respondent as a party and the court would have been bound to consider

the same. We are unable to agree with any of those contentions. We cannot assume non-existent state of things and answer hypothetical questions.

We are only considering the maintainability of the writ petition as presented before us now. The questions raised by learned senior counsel for the

State Government do not really arise for our considerations in this writ petition.

34. At one stage, learned senior counsel for the State Government contended that a Chief Minister will not fall within the four corners of Section

169 of the Indian Penal Code and Section 197 of the Criminal Procedure Code. As rightly pointed out by learned senior counsel for the first

respondent the Supreme Court in M. Karunanidhi Vs. Union of India and Another, held that Chief Minister or Minister is a ''public servant'' within

the meaning of the Code.

35. It is then argued that there can be no private complaint under the provisions of the Prevention of Corruption Act. According to learned

Counsel, u/s 4, every offence punishable under the Act shall be tried by the Special Judge appointed under the Act and Section 17 sets out the

authorities who are authorised to investigate any offence punishable under the Act. It is, therefore, contended that there is no provisions in the Act

for a private complaint and the first respondent ought not to have granted sanction to the fourth respondent for prosecuting the petitioner. As rightly

pointed out by the fourth respondent, there is no merit in this contention. In A.R. Antulay Vs. Ramdas Sriniwas Nayak and Another, , the court has

categorically laid down that a private complaint under the Act is maintainable.

36. It is then contended that sanction could not have been granted before any investigation is done by the appropriate authority. The fallacy in this

argument is also pointed out by learned senior counsel for the first respondent by making a reference to the Judgment of the Supreme Court in

Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, .

37. In the view we have taken on the question of maintainability of the petition, we are not considering the contentions of the fourth respondent that

the petitioner has not come to Court with clean hands and that she is guilty of approbation or reprobation. In the result, we reject the contentions of

the petitioner as well as the third respondent and dismiss the writ petition. There will be no order as to costs.

38. Before parting with this case, we would like to place on record our anguish at the impropriety of some of the newspapers and journals during

the tendency of this case. Some of them went about collecting opinions on the questions which arise in this case from different persons including

lawyers and published them even before arguments before us began. A few others indulged in yellow journalism and started gossiping about the

Chief Justice as well as this Bench. Their object was very clear. We are, the least interested in bouquets to brickbats but we are keen on upholding

the majesty and dignity of this Court. We cannot tolerate publications which scandalise or tend to scandalise or lower or tend to lower the authority

of this Court or interfere or tend to interfere with the administration of justice in any manner. We will initiate separate action against those who are

guilty of such contempt.

39. We are not here referring to newspapers or journals which have only reported the proceedings in the court. No exception can be taken to the

same. But we would earnestly remind the fourth estate which professes to be one of the main pillars of democracy that freedom of expression does

not enable it to commit contempt.