



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4680 OF 2021

Mr. Tanaji Balasaheb Gambhire  
Age:37 years, Occu: Self-employed,  
R/o :- CTS-296, Shukrawar Peth,  
Laxmi Apartment, White House Lane,  
Near Shivaji Maratha High School,  
Pune- 411002, Maharashtra

... Petitioner

V/s.

1.The State of Maharashtra  
Through Additional Chief Secretary,  
Home Department,  
Government of Maharashtra,  
Annex Building, Mantralay,  
Mumbai-400 032, Maharashtra  
E-mail: [acs.home@maharashtra.gov.in](mailto:acs.home@maharashtra.gov.in)

2.The Director General  
Anti-Corruption Department,  
6<sup>th</sup> Floor, Sir Pochkhanwala Road,  
Worli Police Camp, Worli,  
Mumbai 400030, Maharashtra  
E-mail: [acbwebmail@mahapolice.gov.in](mailto:acbwebmail@mahapolice.gov.in)

3.The Superintendent of Police  
Anti-Corruption Department,  
Central Building Compound,  
C- Barrack, Pune-411 005, Maharashtra  
E-mail: [spacbpune@mahapolice.gov.in](mailto:spacbpune@mahapolice.gov.in)

4. The Municipal Commissioner  
Pune Municipal Corporation,  
Shivaji Nagar, Pune – 411 005,  
Maharashtra, Email: [pmcmco@gmail.com](mailto:pmcmco@gmail.com)

... Respondents

Mr. Rajiv Chavan, Senior Advocate, a/w Mr. Rohan Mahadik, Ms. Mekhala More, Ms. Bharvi Samel, Mr. Bhavin Vora, Ms. Asmi Desai & Ms. Sonal Pandey, i/b The Juris Partners, Adv for Petitioner.

Mr. Ajay Patil, A.PP for Respondent – State.

Mr. Sanjeev Kadam, Sr. Adv. a/w Mr. Abhijit Kulkarni, Ms. Varsha Thorat, Mr. Rahul Garg, Ms. Sweta Shah, Mr. Gourav Sahane & Mr. Abhishek Roy, Adv. For Respondent No. 4 - PMC

---

**CORAM : A. S. GADKARI AND  
RANJITSINHA RAJA BHONSALE, JJ.**

**RESERVED ON : 2<sup>nd</sup> DECEMBER 2025  
PRONOUNCED ON : 2<sup>nd</sup> APRIL 2026**

**JUDGMENT [Per : RANJITSINHA RAJA BHONSALE, J.] :-**

- 1) Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
- 2) The Constitution Bench of the Hon'ble Supreme Court in the case of *Subramanian Swamy V. Director, C.B.I reported in (2014) 8 SCC 682*, taking very serious note of the level of corruption prevailing in the country and the objects of enacting the Prevention of Corruption Act, has observed as under:

**“72.** Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision-making power does not segregate corrupt officers into two classes as they are common crimedoes and have to be tracked down by the same process of inquiry and investigation.

*75. Corruption corrodes the moral fabric of the society and corruption by public servants not only leads to corrosion of the moral fabric of the society but is also harmful to the national economy and national interest, as the persons occupying high posts in the Government by misusing their power due to corruption can cause considerable damage to the national economy, national interest and image of the country.*

**81**.....In the supplementing judgment, A.K. Ganguly, J. while concurring with the main judgment delivered by G.S. Singhvi, J. observed: (*Subramanian Swamy case*<sup>22</sup> , SCC p. 100, para 68)

“68. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of the Indian democracy and the rule of law. The magnitude of corruption in our public life is incompatible with the concept of a socialist secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our Preambular vision. Therefore, the duty of the court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption.”

3) By the present Petition, under Articles 226 and 227 of the Constitution of India, the Petitioner seeks to challenge the impugned Orders dated 16<sup>th</sup> April 2019 and 25<sup>th</sup> April 2019 passed by the Respondent No. 4 Municipal Commissioner, Pune Municipal Corporation. The Petitioner further seeks directions to the Respondent Nos. 2 and 3 to conduct the open enquiry into the allegations of corrupt practice by Mr. Prashant Waghmare, as more particularly stated in the Petitioner's complaint dated 18<sup>th</sup> May 2016. According to the Petitioner, the Respondent No. 4 by the said Orders seeks to

protect and cover up for the serious acts of corruption and amassing of disproportionate assets as compared to the known sources of income by Mr. Prashant Waghmare. Further, directions are sought, to lodge an FIR.

4) Facts briefly stated are as follows:-

4.1) The Petitioner filed a complaint with the Superintendent of Police, Anti Corruption Bureau, vide letter dated 18<sup>th</sup> May 2016 and raised the issue of disproportionate assets by one Shri. Prashant Madhukar Waghmare (Mr. Waghmare), who worked as a City Engineer at Pune Municipal Corporation. The Petitioner alleged that, Mr. Waghmare owns disproportionate assets approximately to the tune of Rs. 2000 Crores. That, Mr. Waghmare along with and aided by his wife Mrs. Pradnya Waghmare and brother Mr. Pramod Madhukar Waghmare and their Companies has routed money earned through corruption to develop the disproportionate assets. That, a clear case of disproportionate assets earned through illegal and corrupt means is made out and the same is required to be enquired into.

4.2) That, Mr. Waghmare has got investments and interest in the construction and development carried out in Pune City. That, Mr. Waghmare has got certain connections with the builders in Pune City. That, the builders have carried out constructions without permissions and that the said illegal constructions are protected by Mr. Waghmare. That, Mr. Waghmare has earned disproportionate assets by making available TDR and loading the same on plots where TDR could not have been loaded. That, Mr. Waghmare misused

his public office for earning huge disproportionate assets. That, a case of disproportionate assets is clearly made out and that assets are earned through illegal and corrupt means. That, the same is required to be enquired into and appropriate legal action be taken in accordance with law. In the complaint, the Petitioner has given details of the persons/family members who have assisted Mr. Waghmare so also the details of the companies, which have been formed and used in the activities.

4.3) That, Mr. Waghmare was appointed as an Engineer in the Pune Municipal Corporation in the year 1994 and since 8<sup>th</sup> August 2003, worked as City Engineer, Head of Building Permission Department of Pune Municipal Corporation. Mr. Waghmare established and used various companies to re-route corrupt money with the help of family members, friends, architects and builders etc. In the Petition, the Petitioner has set out the instances and details of such transactions.

4.4) That, the Petitioner vide Complaint dated 18<sup>th</sup> May 2016 has demonstrated the need of an enquiry and investigation in the said matter. After a period of nearly three and half years, the Enquiry Officer, Mr. Sanjay Patange, ACB, Pune, recorded the statement of the Petitioner on 12<sup>th</sup> November 2018. Based on the said statement, the Enquiry Officer vide letter dated 11<sup>th</sup> December 2018 was directed to conduct a secret/discreet enquiry against Mr. Waghmare, in respect of the allegations.

4.5) During the discreet enquiry the concerned Officer, made the

following observations:-

- (i) Mr. Waghmare, in his preliminary statement, gave some information in respect of his family and service;
- (ii) Mr. Waghmare, despite of being granted numerous opportunities did not give information regarding the education expenses of his son, the overseas trips, details of shares, information regarding bank and postal deposits etc;
- (iii) Details regarding the properties, were not given.
- (iv) On 29<sup>th</sup> January 2019, Mr. Waghmare, in reply to information sought regarding the income and expenses of Mrs. Waghmare, informed that the same is personal information of his wife and he would give the same if he received the permission from her in that regard.
- (v) Mr. Waghmare, did not give information regarding the companies owned by his mother, wife and brother. Internet search, conducted by the Enquiry Officer, revealed that 5 construction companies and few other companies were floated and owned by his mother, wife and brother. The books of accounts, income tax returns, of the said companies were not provided by Mr. Waghmare.
- (vi) As Mr. Waghmare did not fully co-operate with the Enquiry Officer and did not provide the required information, details and documents the further enquiry could not be carried out.
- (vii) That, keeping in mind the principle of natural justice Mr.

Waghmare was given ample opportunity to provide the required details and information. The same was not provided, citing personal and professional reasons;

(viii) That, considering the nature of allegations and facts, it was felt necessary that an open enquiry be conducted.

4.6) The Enquiry Officer, Mr. Sanjay Patang, considering the nature of allegations, non-cooperation of Mr. Waghmare and the need of a detailed enquiry and investigation, by his letter dated 31<sup>st</sup> January 2019 addressed to the Superintendent of Police, ACB, Pune sought permission for conducting the open enquiry against Mr. Waghmare and his family members.

4.7) The Superintendent of Police, ACB, Pune vide letter dated 31<sup>st</sup> January 2019 addressed to the Director General, ACB, Mumbai, recommended and requested that the case be processed to seeking "Prior approval" of the Competent Authority, sought permission for open enquiry of Mr. Waghmare and his family members. This was based on the fact that, the Enquiry Officer had conducted a discreet inquiry, still there was information which was required to be gathered as the scope of the enquiry was vast and Mr. Waghmare was not co-operating with the enquiry. Information regarding the Companies and required documents were not being made available.

4.8) The Competent Authority i.e. Commissioner of the Pune Municipal Corporation/Respondent No. 4, by its Order dated 25<sup>th</sup> April 2019 rejected the sanction sought by the ACB for an open enquiry. The said

rejection was based on the statement and written explanation of Mr. Waghmare and the documents produced by him. A hearing was also granted to Mr. Waghmare by the Competent Authority. The Competent Authority considered the explanations and documents (very same document which were sought by the Investigation Officer and not provided to the Investigating Officer by Mr. Waghmare) produced by Mr. Waghmare. The Competent Authority, concluded that, no case was made out against Mr. Waghmare.

4.9) Based on the refusal to grant previous approval and the directions of the Director General, ACB, Mumbai, the Deputy Superintendent of Police, ACB, Mumbai issued directions to the Superintendent of Police, ACB, Pune vide letter dated 28<sup>th</sup> June 2019 for closure of ongoing confidential enquiry of Mr. Waghmare. Superintendent of Police, ACB, Pune, further issued directions vide letter dated 18<sup>th</sup> July 2019 for closure of the ongoing confidential enquiry against Mr. Waghmare. All of this, was done and based on the Order dated 16<sup>th</sup> April 2019 rejecting the sanction by the Competent Authority/Respondent No. 4.

4.10) The Information Officer, ACB, Pune with regard to the RTI application dated 27<sup>th</sup> August 2019, provided only cursory and casual information vide letter dated 23<sup>rd</sup> September 2019 to the Petitioner. Vital and important information was suppressed. In other similar cases, the Information Officer has provided documents, which documents in the case of Mr. Waghmare were marked as confidential and not provided. The Petitioner's RTI

Appeal was rejected by Order dated 20<sup>th</sup> November 2019.

4.11) The Competent Authority i.e. Commissioner of the Pune Municipal Corporation/Respondent No. 4, by an Order dated 16<sup>th</sup> April 2019 refused to grant previous approval to hold an open enquiry. Based on the Order, communication dated 25<sup>th</sup> April 2019, 28<sup>th</sup> June 2019 and 18<sup>th</sup> July 2019 were issued. The said Orders dated 16<sup>th</sup> April 2019, and 25<sup>th</sup> April 2019 are the subject matter of challenge in the present petition.

5) Mr. Rajiv Chavan, learned Senior Counsel appearing for the Petitioner submitted that:-

5.1) The rejection of the grant of sanction of the open enquiry vide Order dated 16<sup>th</sup> April 2019 and 25<sup>th</sup> April 2019 and all further communications based on the said Orders are untenable and illegal. The Respondent No. 4, by exceeding its authority and power and without an application of mind and for reasons best known has rejected the sanction for an open enquiry. The conduct of Respondent No. 4, raises serious doubts, on the unbiased and impartial duties by the Competent Authority. The Respondent No. 4, has exceeded his powers, by himself conducting an enquiry and investigation, which in fact is the job of the Enquiry Officer/ Officer of the ACB under section 17 of The Prevention of Corruption Act, 1988 (PC Act). That, Respondent No. 4, under the law was required to only see whether, there was material available and whether a prima facie case is made out for granting sanction to an open enquiry. The Respondent No. 4 failed to

appreciate and consider that, Mr. Waghmare had not co-operated with the enquiry of the ACB as is clearly stated by the Enquiry Officer of the ACB in its letter/report dated 31<sup>st</sup> January 2019.

5.2) In the letter dated 31<sup>st</sup> January 2019, addressed by Police Inspector to the Superintendent of Police ACB, it is specifically recorded that, Mr. Waghmare had not co-operated with the enquiry in spite of being granted opportunities. That, Mr. Waghmare, failed to give details in respect of the amount spend for the education of his son, the overseas trips, loans, investments etc. Mr. Waghmare, did not give details in respect of his properties so also the properties belonging to his wife. That, the profit and loss accounts, income tax returns etc. in respect of certain related companies, were not provided. It was in the background of this conduct of non-co-operation of Mr. Waghmare, the Enquiry Officer eventually sought previous approval for an open enquiry.

5.3) That, the Competent Authority/Respondent No. 4, by passing the Order dated 16<sup>th</sup> April 2019 and 25<sup>th</sup> April 2019 has shown a total disregard to the requirements of law and the scope of the powers and authority under section 17(A) of the PC Act. That, Respondent No.4, after giving Mr. Waghmare a hearing and based on the documents submitted by Mr. Waghmare has gone ahead and recorded a finding that, there is no case made out against Mr. Waghmare. The Respondent No.4 has further recorded a finding that, Mr. Waghmare has created his assets from his own income and

from the ancestral properties and that he has incurred his expenses from the said properties and that there is no case made out for disproportionate assets. The Order dated 16<sup>th</sup> April 2019 and 25<sup>th</sup> April 2019 are untenable, as the Respondent No. 4, has exceeded his jurisdiction, acted beyond his powers and authority and in fact exercised jurisdiction which is not vested in the Respondent No. 4 being the Competent Authority. Mr. Chavan therefore prayed that, the impugned Orders and all actions taken pursuant to and based on the said Orders may be set aside and the petition be allowed.

6) Mr. Sanjiv Kadam, the learned Senior Counsel appearing for the Respondent No. 4 submitted that:-

6.1) Respondent No. 4 has exercised his jurisdiction in a proper and appropriate manner. There are various Government Resolutions under which the Authorities have the power either to grant or refuse sanction for an open enquiry. Reliance was placed on the Judgment in the case of *Shreeroopa V/s State of Karnataka, reported in 2023 SCC Online Kar 68*, to contend that, the object of Section 17(A) of the PC Act is to ensure that, unnecessary enquiries/investigation against public servants are prevented and that the Competent Authority is required to take decisions to accord or refuse approval to conduct an investigation. The Competent Authority, is required to examine and consider whether the opinion formed by the Enquiry Officer that the investigation is justified or not. That, there is no material available, to grant previous approval under section 17(A) of the PC Act.

6.2) If the Competent Authority, is satisfied that, the opinion as formed by the Enquiry Officer is justified and its employee is required to be subjected to an investigation, the Competent Authority can accord its approval. That, the employer is the ultimate person to determine whether its employee required to be investigated or not especially when an allegation of commission of criminal offence is levied against the employee.

6.3) That, protection is offered to public servant under the PC Act is at two levels. The first level of protection is even before the investigation/enquiry is conducted when previous approval is needed under Section 17(A) of the Act and the second level of protection is after completion of the investigation where sanction to prosecute a public servant is required under Section 19 of the Act. That, the Respondent No. 4 after considering the documents and the written say of Mr. Waghmare was convinced that, there is no material to accord previous approval for an open enquiry. That, the Order dated 16<sup>th</sup> April 2019 and communication dated 25<sup>th</sup> April 2019 are correct and passed in accordance with the law.

7) Mr. Rajiv Chavan, learned Senior Counsel, appearing for the Petitioner, in rejoinder submitted that:-

7.1) The Order dated 16<sup>th</sup> April 2019 and communication dated 25<sup>th</sup> April 2019, are completely misplaced and untenable as the public servant does not even have a right under the law to explain the alleged disproportionate assets before filing of an FIR. The rights of the accused public servant would

arise only after an FIR is registered. That, Section 17(A) would not be applicable in the present case as Section 17(A) specifically relates to recommendations and decisions taken by the public servant in discharge of official functions or duties. That, the present case does not relate to any discharge of the official functions and duties. The present case is a disproportionate assets case. That, the Orders dated 16<sup>th</sup> April 2019, 25<sup>th</sup> April 2019 and all consequent actions based thereon are untenable, illegal and bad in law. That, the Order dated 16<sup>th</sup> April 2019 and communication dated 25<sup>th</sup> April 2019 and all consequent actions based thereon are untenable, illegal and bad in law. That, they ought to be quashed and set aside.

8) After perusal of the record, considering the facts and the arguments advanced before us the following questions arise for our consideration:-

(i) What is the scope of the power and authority of the Competent Authority under section 17(A) of the PC Act?

(ii) Can the Competent Authority while considering the question of according "previous approval" under section 17(A) of the PC Act, venture into the arena of investigation and enquiry and conclude that no offence is committed?

9) The Hon'ble Madras High Court in the case of *Dhandapani v. Vigilance Commissioner, 2021 SCC OnLine Mad 1396*, has observed that, previous approval is necessary for conducting any enquiry or inquiry or

investigation into any offence alleged to have been committed by a public servant, which is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties. It is further held that, in offences for allegedly acquiring assets disproportionate to income, previous approval under Section 17(A) of PC Act is not at all necessary and that the said provision is not applicable to the disproportionate assets cases. A similar view has been taken in the case of *Lala Bala Naga Dharma Singh v. State of A.P.*, 2024 SCC OnLine AP 1277, by the Andhra Pradesh High Court.

9.1) The Kerala High Court in the case of *Shankara Bhat v. State of Kerala*, 2021 SCC OnLine Ker 3427, has observed that the scope of section 17(A) is specifically confined to “any recommendation made or decision taken by public servant” which alone falls within the protection under section 17(A). It is further observed that, case of offences like misappropriation of funds, fraud, falsification of accounts, criminal breach of trust, conspiracy, etc cannot be covered by the protection under section 17(A) of the PC Act as there is no involvement of any decision or recommendation. The said acts, cannot be considered as, one done in discharge of his official functions and duties as contemplated under section 17(A). Therefore, it cannot, by any stretch of imagination, be held that investigation into any of the offences as mentioned above need previous approval under section 17(A).

9.2) The Hon'ble Karnataka High Court in the case of *Shreeroopa v. State of Karnataka, 2023 SCC OnLine Kar 68*, observed that in a case for grant of previous approval, under section 17(A) of PC Act, it is not necessary that, there should be clear incriminating evidence with the Enquiry Officer at the stage of him seeking previous approval under Section 17(A) of the Act. What is required, under section 17(A) of the PC Act is that the Enquiry Officer has some credible evidence, on the basis of which, he forms an opinion that an investigation is warranted. It is specifically observed that, the authority would be required to only consider the opinion that is formed by the Enquiry Officer and the material that he possesses while considering the request for approval. Since the public servant is yet to be investigated, the question of considering any incriminating material and coming to the conclusion that an investigation is unnecessary would not really arise. Since the public servant is yet to be investigated, the question of considering whether there is any incriminating material or its veracity by the State Government to come to the conclusion that an investigation is warranted or not, would be untenable and stand to defy logic or reason.

9.3) The Hon'ble Supreme Court in the case of *Nara Chandrababu Naidu v. State of A.P., reported in (2024) 13 SCC 292*, has observed that :-

“54. Since the main issue involved in the present appeal is in respect of the interpretation of the newly inserted provision Section 17-A, let us regurgitate the basic principles of statutory interpretation as

propounded by this Court from time to time. It is well known rule of interpretation of statutes that the courts must look to the object which the Statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary<sup>34</sup>. The purport and object of the Act must be given its full effect<sup>35</sup>. The text and the context of the entire Act must be looked into while interpreting any of the expressions used in the Statute. If two views are possible, the view which most accords with the object of the Act, and which makes the Act workable must necessarily be the controlling view. Even penal statutes are governed not only by their literal language, but also by the object sought to be achieved by Parliament<sup>36</sup>. Even if the words occurring in the statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the context of the other provisions of the statutes and bring about the real intention of the legislature<sup>37</sup>.

**55.** Although not specifically mentioned in the Statement of Objects and Reasons of the 2018 Amendment Act, the object of inserting Section 17-A in the PC Act, which is in pari materia with the provisions contained in Section 6-A of the Delhi Special Police Establishment Act, 1946, is to protect the honest public servants from the harassment by way of inquiry or investigation in respect of the decisions taken or acts done in bona fide performance of their official functions or duties. Whereas Section 19 bars the courts from taking the cognizance of an offence punishable under the PC Act, alleged to have been committed by public servants except with the prior sanction of the authorities concerned mentioned therein, Section 17-A bars the police officer from conducting any enquiry or inquiry or investigation of offences relating to recommendations made or decision taken by public servant in discharge of official functions or duties, without the previous approval of the authorities concerned mentioned therein. From the bare reading, it is discernible that Section 17-A has the following main four facets:

- (i) Enquiry or inquiry or investigation of offences under the PC Act.
- (ii) Alleged offences should be relating to the recommendation made or decision taken by a public servant.

- (iii) Such recommendation made or decision taken by a public servant should be in discharge of official functions or duties and
- (iv) Previous approval of the authorities mentioned therein.

**56.** Though the word “enquiry” as contained in Section 17-A has neither been defined in the PC Act nor in CrPC, as per the Standard Operating Procedures (SOPs) issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) dated 3-9-2021 for processing of cases under Section 17-A, “enquiry” means any action taken, for verifying as to whether the information received by the Police Officer pertains to the commission of an offence under the Act (Para 4.2 of the said SOPs). The meaning of the words “inquiry” and “investigation” for the purposes of Section 17-A could be imported from the definitions contained in Section 2(g) & Section 2(h), respectively of CrPC, the same being made applicable subject to certain modifications in view of Section 22 of the PC Act.

**66.** As held in *Subramanian Swamy v. Manmohan Singh*<sup>48</sup>, in case of two possible constructions of a provision in the PC Act, it would be the duty of the court to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it. In *Subramanian Swamy v. CBI*<sup>49</sup>, the Constitution Bench had observed while dealing with Section 19 of the PC Act that the protection against malicious prosecution which is extended in public interest, cannot become a shield to protect corrupt officials.

**68.** Even otherwise, absence of approval before conducting any enquiry or inquiry or investigation into an offence alleged to have been committed by a public servant, as contemplated in Section 17-A could never be the ground for quashing the FIR registered against the public servant or the proceedings conducted against him, more particularly when he is also charged for the other offences under IPC in respect of the same set of allegations. As stated earlier, there are other important facets contained in Section 17-A, like whether the alleged offence is relatable to the recommendation made or decision taken by the public servant or not, and whether such recommendation or decision was made or taken in discharge of his official functions or duties or not, etc.

Such facets could be examined only when the evidence is led during the course of trial. The alleged acts which prima facie constitute the offences, though done under the purported exercise of official function or duty, could not fall within the purview of Section 17-A. The protection sought to be granted to a public servant under Section 17-A could not be extended to his acts which prima facie were not in discharge of his official functions or duties. Any other interpretation would certainly tantamount to scuttling the investigation at a very nascent stage. Such could neither be the intention of the legislature nor could such provision be interpreted in the manner which would be counter productive or frustrating the very object of the PC Act.”

9.4) The Hon'ble Supreme Court in the case of *State of Karnataka v. Channakeshava H.D.*, reported in 2025 SCC OnLine SC 753, has observed that:-

“14. Mr. Devadatt Kamat, senior counsel, has relied upon a recent Three-Judge Bench decision of this Court in *CBI v. Thommandru Hannah Vijayalakshmi*, (2021) 18 SCC 135 where it was specifically stated that an accused public servant does not have any right to explain the alleged disproportionate assets before filing of an FIR. We are also of the opinion that this is the correct legal position as there is no inherent right of a public servant to be heard at this stage.

15. In view of the above, it is clear that preliminary enquiry was not mandated in the present case, considering that detailed information was already there before the SP in the form of the source report referred above. We have also gone through the order passed by the SP, directing registration of FIR against respondent no. 1, which reflects that the SP had passed that order on the basis of material placed before him in the form of the source report.”

10) The Prevention of Corruption Act, 1988 (PC Act) is a special statute, enacted to consolidate and amend the law relating to the prevention of corruption and for the matters connected therewith and incidental thereto.

The aim, object and intention of the PC Act, is to provide a more robust and complete law, and to make corruption laws more effective in the country by widening their scope and strengthening/complementing the provisions of the PC Act so as to punish the persons guilty of corruption and eventually eradicate menace of corruption. Considering the aims and objects of the Act, it would be the bounden duty of the Courts to interpret the PC Act and its provisions in a manner that furthers its aims and objects.

11) The PC Act, itself provides for certain safeguards and an inbuilt mechanism of checks and balances. Chapter III provides for offences and penalties. Chapter IV consist of sections 17, 17(A) and 18 which provides for Investigation into cases under the Act. Chapter V provides for sanction for prosecution and other Miscellaneous provisions under the Act, wherein section 19 provides for previous sanction necessary for prosecution. In the present matter, we are mainly concerned with sections 17, 17(A) and 19 of the PC Act.

12) Section 17 of the PC Act, enumerates and enlist the persons who are authorized to investigate crimes/offences under the PC Act. The section begins with a non-obstante clause in as much as it states that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmadabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of the Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant:

12.1) The first proviso, to section 17 provides that, if a police officer not below the rank of Inspector of Police is authorized by the State Government, by a special or general order, he may investigate the matter without the order of the Metropolitan Magistrate or a Magistrate of the first class. The second proviso, states that an offence referred to in section 13 (1) (b) of the PC Act shall not be investigated without the order of a police officer not below the rank of the Superintendent of Police.

12.2) A plain reading of section 17 makes it clear that, notwithstanding the provisions of the Code of Criminal Procedure certain safeguards are provided so as to ensure that the offences under the PC Act, are investigated by responsible and senior police officers. The PC Act itself provides that the investigation, under the PC Act, shall be done by the police officers of a particular rank and/or seniority and/or in some cases Officers authorized by the State Government by a general or special order. According to us, the

intention of the legislature is clear, that the investigation under the PC Act, can be done only by authorized police officers and no other. The intention being that, the investigation is undertaken by the experienced officers, who are well trained, have the required expertise and experience to carry out the investigation. Further, depending on the nature and gravity of the offence, officer appointed may be an officer not below the rank of an Inspector of Police or an Assistant Commissioner of Police or in some cases police officer not below the rank of a Superintendent of Police. Reading of section 17 of the PC Act, makes it clear that the PC Act distinguishes and differentiates investigation, as a specialized task, to be undertaken by senior and experienced officers, who are authorized under section 17 of the PC Act and no other. The PC Act itself, differentiates and distinguishes between the authority and power of the Police officer under section 17 and that of the competent authority under section 17(A) to grant “previous approval”.

13) Section 17(A) of the PC Act, provides that, no police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval of the concerned Union or State Government where the person who is or was employed, at the time when the offence was alleged to have been committed and in the case of any other person, of the authority

competent to remove him from his office, at the time when the offence was alleged to have been committed. The proviso clarifies that, no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person. The concerned authority, is to convey its decision under the section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

13.1) Perusal of section 17(A) of the PC Act, would make it clear that, Section 17(A), comes into play at a stage prior to conducting investigation and has been introduced to protect and safeguard honest officers and assist in providing and creating a pressure free atmosphere and surrounding for the officer to carry out his or her duties without any fear. We have also noted that, as the stage under section 17(A) is a stage prior to conducting investigation, the scope of the section is restricted. The restricted scope of the power and authority is evident from the fact that Section 17(A) of the PC Act, will come into play, apply and can be invoked only and only when there is a “decision” taken or “recommendation” made by a public servant and the said “decision” or “recommendation” is a “decision” taken or “recommendation” made by the public servant in discharge of his official functions or duties.” In short, if the act/conduct of the public servant, which is complained of, amounts to an offence by itself, prior sanction or approval from the Competent Authority

would not be necessary and the police officer would be entitled to without any procedural formality of “previous approval” investigate the offence under the law. Perusal of section 17(A) of the PC Act, would make it clear that “previous approval” from the competent authority in each and every case or for each and every enquiry or inquiry or investigation, into any or every offence committed by the public servant is not envisaged and therefore not required. In an act or wrong doing by a public servant, which has no connection, relation or nexus with the official duty or the discharge of an official duty, there would be no need or necessity to seek previous approval under section 17(A) of the PC Act. This, in our view is the crux of this section. One can thus safely conclude that, previous approval under section 17(A) for conducting any enquiry or inquiry or investigation is required only when the offence alleged is relatable to a decision taken or recommendation made by the public servant in connection, relation or nexus with the official duty or the discharge of an official duty. Acts and conduct of public servants, which are independent of the official duty and/or ex facie criminal or constitute an offence, do not require previous approval under section 17(A) of PC Act. In our opinion, section 17(A) of PC Act, does not protect offences like cheating, misappropriation, fraud, falsification of accounts, criminal breach of trust, receiving bribes and or case of disproportionate assets. The said offences, on a plain reading of the section 17(A) would be beyond its scope and ambit.

13.2) The other aspect which clearly emerges from a joint reading of section 17 and 17(A) of the PC Act is that, the power and authority to investigate into an offence under the PC Act is vested in the authorized police Officers under section 17 of the PC Act. All investigation has to be carried out by Officers as authorized by and under section 17 of the PC Act and no other. This is the mandate of section 17 of the PC Act. Under section 17(A) of the PC Act, previous approval is sought in respect of and in relation to acts and recommendations in relation to the public duty. Section 17(A) is a protective shield to protect officers from mala fide and motivated prosecutions. What needs to be seen at the first instance is whether the act complained of “is related to the public functions/duty” and then if there is material which warrants an enquiry or inquiry or investigation. Considering the scope of section 17(A) and the stage at which “previous approval” is sought, it is therefore, evident and in fact not necessary that there should be clear incriminating evidence with the Enquiry Officer at the stage of seeking previous approval under Section 17(A) of the Act. One must remember that the “previous approval” is sought at a stage prior to and for conducting an enquiry or inquiry or investigation. All evidence and material, is yet to be collected and that the said process is required to be undertaken. What is available is credible material, which in the opinion of the Enquiry officer warrants a complete and thorough enquiry or inquiry or investigation. The provisions of section 17 and 17(A) of the PC Act are required to be read

together and a purposive interpretation is required to be given to both the sections, so as to harmoniously serve and further the ultimate object of the PC Act i.e. to eradicate corruption and punish the corrupt. What would be required under the provisions of Section 17(A) of the PC Act, is that the Enquiry Officer has some credible evidence, on the basis of which, he forms an opinion that an investigation is warranted. The PC Act, does not envisage a situation, where investigation is permitted by the Competent Authority under section 17(A) of the PC Act, nor is the Competent Authority vested with any such power under section 17(A) to consider the entire matter on merits or consider the defense of the public servant and render a finding on the merits of the case at the stage when only “previous approval” is sought to enquiry or inquiry or investigation in the matter. As noted herein before, under section 17 of the PC Act, the investigation can only be done by the authorized police officers. The Competent Authority, under section 17(A) of the PC Act, has no power to shut down or foreclose an enquiry or inquiry or investigation of an offence of corruption. The Competent Authority cannot take over and enter into the arena and domain of investigation by the authorized Officer under section 17 of the PC Act. One other more important reason, why the Competent Authority should not enter the domain/jurisdiction of the investigating authority is to ensure that the investigation is independent, thorough, complete, fair and unbiased. This is a very important and crucial

aspect which one needs to keep in mind and be nurtured and followed, so as to achieve the object of the PC Act.

13.3) Considering the provisions of the PC Act, we are of the firm opinion that, the Competent Authority under section 17(A), cannot and ought not to take over the role and duties of the authorized Enquiry Officer appointed under section 17 of the PC Act. It cannot be that the Competent Authority, under section 17(A) of the PC Act, oversteps its power and authority, takes over or transcends into the jurisdiction vested in the Enquiry Officer and conducts detailed and minute hair splitting analysis of the material furnished by the Enquiry Officer. At the stage of seeking “previous approval” under Section 17(A) of the PC Act, the Enquiry Officer is required to form only a preliminary and tentative opinion or a prima facie case as to whether an investigation is warranted or not. This, obviously is based on the preliminary and basic material which is available or gathered by the Enquiry officer, which would indicate that a further detailed enquiry or inquiry or investigation is required to be undertaken.

14) Section 19 of the PC Act, comes into play after the investigation is over and sanction is sought to prosecute the public servant. Under section 19 of the PC Act, the material collected during the investigation is considered and sanction is accorded on the basis of the said material. Section 19 of the PC Act is a stage of granting permission to prosecute the public servant. It is here that, the legality of the evidence and sufficiency of the material is considered.

Section 19 of the PC Act, provides for a hearing to be granted to the Public servant. Section 17(A) of the PC Act, does not provide for hearing of the public servant. The legislature, has made a distinct and clear difference between the scope, ambit and powers of the said sections. Considering the legal repercussions of exercising the power under section 19 of the PC Act, the section provides an option to take legal consultation. Section 17(A) of the PC Act, does not provide for the said eventualities nor does it deal with “sanction” but is restricted only to “previous approval” for an offence which is said to have been committed by a public servant under the provisions of the PC Act which is relatable to a recommendation made or decision taken in the discharge of official duties. The act of seeking “previous approval” to enquire or inquire or investigate is one stage prior to investigation and in a manner a permission to investigate further. Permission to enquiry or inquiry or investigate cannot be refused, if there is credible prima facie evidence. If section 17(A) of the PC Act is read to mean a sanction to investigate, it would negate the provisions of section 17 and 19 of the PC Act. This, in our opinion, is not the intention of the legislature. It cannot be the intention of the legislature to create and provide a mechanism to deal with offences of corruption and then create obstacles in the procedure and process and thereby slow down every investigation or enquiry or inquiry as against the public servant. This interpretation would defeat the very purpose and object of the PC Act.

15) It would be relevant to mention here that, what is sought is only “previous approval” to enquire or inquire or investigate. There is at all times a possibility of the Enquiry officer concluding, after a detailed and through investigation that, no case is made out to seek sanction under section 19 of the PC Act. The said possibility cannot be ruled out. While considering the request for granting “previous approval” under section 17(A) the Competent Authority is required to consider the opinion that is formed by the Enquiry Officer and the material that he possesses at that time. Considering the stage at which the “previous approval” is sought, the conduct of the concerned public servant towards the investigation/enquiries made by the Enquiry Officer ought to be also considered. Pertinent to note and keep in mind that, the public servant is yet to be enquired or inquired or investigated into, and the fact whether there is a serious and strong suspicion or enough material to seek “previous approval” which has to be considered. Therefore, the Competent Authority, considering on merits, the incriminating material or the say of the public servant or even giving him a hearing and coming to the conclusion that an investigation is unnecessary, is a concept which is alien to section 17(A) of the PC Act and cannot be accepted in law.

16) Since previous approval is sought for further investigation, the question of the Competent Authority considering material or testing its veracity to conclude that no case is made out or that an investigation is not warranted at all, cannot arise, is wholly untenable. It is in fact, contrary to the

provisions of the PC Act itself. Once credible and reasonable material is available or the permission of previous approval is sought on strong suspicion, the previous approval is required to be granted. What is required is that, the Enquiry Officer is given the opportunity to collect and collate all required material, enquire, inquire and investigate the allegations and form an opinion and make out a case to seek sanction under section 19 of the PC Act. The said process cannot be scuttled and interfered with by the Competent Authority under section 17(A) of the PC Act nor can sections 17 and 19 be made nugatory by the said act of over stepping the jurisdiction under section 17(A) of the PC Act.

17) We are of view that, section 17, 17(A) and 19 of the PC Act, are clearly distinct and independent provisions, which come into operation and are invoked at different stages of the process, have an independent scope and ambit of authority of each other, yet complement each other to ensure a judicious check and balance to protect honest officers and at the same time ensure that the aims and objects of the PC Act are furthered at all the different stages of an investigation. We are of the firm view that, there is telling difference between the granting "sanction to prosecute" and "according an approval to investigate to an Enquiry Officer". The said ideas and concept i.e "sanction to prosecute" and "grant of approval to investigate" are distinct and different. They have a flavor of their own, are governed by distinctly, different parameters and operate at different stages of the process/procedure and law.

Obviously, "grant of approval to Investigate" will come at an earlier stage and time and "sanction to prosecute" at a much later stage and time. At the time of seeking sanction to prosecute, the Enquiry Officer, is armed and well equipped with all the material, legal and cogent evidence as the investigation is completed and the material is collected and collated. The case is crystallized as far as facts are concerned.

18) We are of the view that, the integrity of a public servant is required to be beyond suspicion. If a situation arises that the Enquiry Officer authorized under section 17 of the PC Act, has material, which cast a doubt on the integrity of a public servant, and the Enquiry Officer under the Act is of the opinion that there is material which indicates that an enquiry or investigation is called for, then it would be only in the interests of both the public servant, the institution and the society at large that the same is carried out. The same will be in line with and in furtherance of the objectives of the PC Act. The said enquiry and investigation cannot be blocked or denied by the Competent Authority by an unwarranted and exceeding use of the limited powers granted under section 17(A) of the PC Act. The same would be a misuse of the power under Section 17(A) of the PC Act by the Competent Authority, and nothing less than a abuse of the process and mechanism of law.

19) The present case, pertains to the Petitioners complaint/grievance of Mr. Waghmare, possessing assets disproportionate to his known sources of income and not with any offence which is relatable to any "recommendation

made” or “decision” taken in the “official capacity” or “official duties”. The present case, is a case of disproportionate assets. In our view, the basic premise that Section 17(A) of the PC Act is applicable in the present case is totally misplaced and misconceived. We are of the opinion, that in the present case the offence alleged is one of amassing disproportionate assets, no previous approval from the competent authority is required for the police to conduct an enquiry or inquiry. Such an offence is not relatable to a recommendation made or a decision taken by such public servant.

20) In the present case, the allegations against Mr. Waghmare are that of possessing disproportionate assets, in respect of which he was called for an enquiry and certain information was sought by the Enquiry Officer. The record would indicate that, Mr. Waghmare has not provided the required information to the Enquiry Officer. There appears to be total non-cooperation on the part of Mr. Waghmare. The same is evident from the letter of the Enquiry Officer dated 31<sup>st</sup> January 2019. In the said letter, the Enquiry officer, has categorically recorded that, Mr. Waghmare in spite of being granted repeated opportunities avoided and neglected to forward the information. The information as sought was in respect of the sons education expenses, expenses in respect of the overseas trips, information regarding shares, bank accounts, fixed deposit held with the postal authorities. Information regarding immovable properties was to be provided within 8 days which was not provided. As regards the information regarding the properties of Mr.

Waghmare's wife, the Enquiry Officer was informed that the same could be given only with her permission. Further, information regarding the construction companies allegedly owned and operated by Mr. Wahgmare's mother, wife and brother were also not provided. The Enquiry Officer has specifically recorded that as the information i.e accounts, profit and loss accounts, income tax returns, were not provided therefore further enquiry and investigation could not be carried out. The Enquiry Officer has specifically recorded the non-cooperation of Mr. Wahgmare and the fact that despite of being granted opportunities to give an explanation and provided documents and information, none has been forwarded to the Enquiry Officers. It was in this background that the Enquiry Officer sought permission to conduct an open enquiry. The afore-noted facts have been detailed in the letter dated 31<sup>st</sup> January 2019 of the Enquiry Officer.

21) We have to note that, surprisingly the very same information has been very promptly forwarded and submitted by Mr. Waghmare to the Competent Authority/ Respondent No. 4 as is evident from the impugned Orders dated 16<sup>th</sup> April 2019 and 25<sup>th</sup> April 2019 so also the letter dated 31<sup>st</sup> January 2019. This, when it is no part of the duty of the Respondent No.4 to act as an enquiry/investigating Officer or be a part of the investigating team or investigation. As observed hereinbefore, the scope of authority and power of the Respondent No.4, while considering an request for "previous approval" under section 17(A) of the PC Act, is only to verify or check if the act/offence

complained of in respect of which previous approval is sought for an enquiry or inquiry or investigation “is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties” and nothing more. Clearly, there is no power or authority to decide or judge the allegations or record a finding on the material which is available. Further, if the offence complained of is independent of any decision or recommendation of the public servant related to the discharge of official functions and duties, there is no requirement of seeking a “previous approval”. As noted earlier, the present case relates to any enquiry or investigation in respect of disproportionate assets.

22) We have also perused the Affidavit in reply dated 1<sup>st</sup> February 2023, filed by Mr. Vikram Kumar (IAS) for and on behalf of the Respondent No. 4. We have noted that, the impugned Order dated 16<sup>th</sup> April 2019 and 25<sup>th</sup> April 2019 are passed by Mr. Saurabh Rao, Commissioner of Respondent No. 4. Surprisingly, the reply has been filed not by the same person who passed the impugned Order dated 16<sup>th</sup> April 2019 and 25<sup>th</sup> April 2019. Be that as it may be, but in aforementioned circumstances paragraphs 4 to 6 of the said Affidavit make an interesting read, which are as under:-

*“4. As regards the letter dated 31.01.2019, annexed at Exhibit ‘TT’ (page 134 of the petition compilation), I say that, the competent authority has passed order dated 16/4/2019 and consequently communicated its decision through outward No - MA/GOP/01, Dated-25/4/2019. The letter dated 31.01.2019 has been referred and considered by the Competent Authority. The Competent Authority has found that, no*

*disproportionate assets were found with the Public Servant Mr. Waghmare. 5. The main ground for refusal to hold an open inquiry was that in view of the provisions of rule 19(3A), If the spouse or any other member of Government Servant enters into any transaction out of his or own funds as distinct from the fund of government servant himself, in his or her name and in his or her own right, shall not be treated as a transaction entered into by the member of the family of government servant within the meaning of sub rules (2) and (3). When the competent authority had satisfied its conscious with the fact that the funds received by government employee are accounted properly and found place in the bank records as well as Income tax records, it has recorded a finding that Mr. Waghmare has not received any amounts or have any transaction with his mother, father, wife or brother as the case may be. Annexed hereto and marked as **Exhibit 'R-3'** is the copy of extract of Rule 19 of MCS Rules.*

*6. I say that, the report of inquiry committee was also verified by the then additional Municipal Commissioner who also is an IAS officer. In his detail report, he has considered all the issues minutely and he suggested for giving an opportunity of hearing to Mr. Waghmare based on the voluminous record filed by him in 3 files. The said suggestion of the Additional Municipal Commissioner was accepted by the then Municipal Commissioner and date of hearing was fixed on 16/4/2019 at 11 am. The record shows that hearing was conducted on 16/04/2019 and the then Municipal Commissioner was pleased to take final decision in the matter after following the principles of natural justice. Since the said record is confidential, I crave leave of this Hon. Court to produce the record for perusal at any time as per the convenience of Hon. Court.”*

23) The deponent despite of being different and distinct individual and not the same person who passed the Order dated 16<sup>th</sup> April 2019 and 25<sup>th</sup> April 2019 has specifically stated that, the letter dated 31<sup>st</sup> January 2019 has been referred and considered by the Competent Authority. A perusal of the impugned Order dated 16<sup>th</sup> April 2019 would indicate that the said letter of 31<sup>st</sup> January 2019 has only being referred to the Order dated 16<sup>th</sup> April

2019. It has not considered the contents of the letter dated 31<sup>st</sup> January 2019. The Order, contrary to the contents of the letter dated 31<sup>st</sup> January 2019, records that Mr. Waghmare had co-operated with the investigation and that enough opportunities were not given to Mr. Waghmare by the Enquiry Officer. The contentions of the Enquiry Officer raised in the letter dated 31<sup>st</sup> January 2019 have not at all been considered. As regards the Order dated 25<sup>th</sup> April 2019 does not even referred to the letter dated 31<sup>st</sup> January 2019 leave apart considering the same. We have further noted that, the deponent of the said affidavit has made categorical statement i.e;

*“When the Competent Authority had satisfied its conscious with fact that the funds received by government employee are accounted properly and found place in the bank records as well as Income tax records, it has recorded a finding that Mr. Waghmare has not received any amounts or have any transaction with his mother, father, wife or brother as the case may be.”*

24) We failed to understand, as how the deponent can depose in respect of the fact that the Competent Authority, who has passed the Order, had satisfied its conscious. The said affirmation on oath is nothing but an attempt to cover up for the Competent Authority, support an unfounded and untenable Order and give reasons, to supplement and support the impugned Order on behalf of the Respondent No.4 for reasons best known to the deponent. We are shocked to read the averments and contents of the said Affidavit, especially when there is no authority or power vested in the Competent Authority/Respondent No. 4 to investigate the matter, hear the

concerned public servant or decide the matter on merits. The actions of Respondent No.4 are an attempt to obstruct and thwart an independent, thorough, fair and impartial enquiry/investigation. We are afraid that cannot be permitted. This conduct of the Respondent No.4, is nothing but an attempt to block the enquiry and/or investigation.

25) We are of the opinion that the Respondent No. 4 in passing the impugned Order dated 16<sup>th</sup> April 2019 and the Order/communication dated 25<sup>th</sup> April 2019 has clearly exceeded the jurisdiction and powers vested in the Respondent No. 4 under Section 17(1) of the PC Act. We say this for various reasons. The discreet enquiry was initiated in the year 2015 and by letter dated 31<sup>st</sup> January 2019 the Enquiry Officer sought previous approval for conducting an open enquiry mainly on the ground that Mr. Waghmare had not cooperated with the enquiry. On one pretext or another, he delayed or refused to furnish the required information and documents. Considering the nature of the allegations and the vast scope of the enquiry, a request was made for an open enquiry. The letter dated 31<sup>st</sup> January 2019 mentions in detail and the steps taken and the non-cooperation of Mr. Waghmare. The Respondent No. 4, in its Order dated 16<sup>th</sup> April 2019, has granted hearing to Mr. Waghmare which is not envisaged or contemplated under Section 17(A) of the PC Act. Further, despite having a letter dated 31<sup>st</sup> January 2019 on record, Respondent No. 4, choose to only refer to the letter and failed to consider the contents of the said letter. We find this conduct, to say the least, strange.

26) The letter dated 31<sup>st</sup> January 2019, clearly records that, due to non-cooperation of Mr. Waghmare the discreet enquiry has not progressed and considering the vast nature of the enquiry and allegations an open enquiry was requested. The Order dated 16<sup>th</sup> April 2019, records that the discreet enquiry has been conducted since the year 2015 and that after the period of 4 years the Enquiry Officer has not provided any evidence. The Respondent No. 4 has totally failed to take into consideration the contents of the letter dated 31<sup>st</sup> January 2019, the fact that the delay was due to the non-cooperation of Mr. Waghmare and has misdirected itself. It would be pertinent to note that the Enquiry Officer, due to the non-cooperation of Mr. Waghmare, sought prior approval to conduct an open enquiry. As noted hereinabove, the scope of Section 17(A) is limited to consider offences/acts which are relatable to recommendation made or decision taken by public servant in discharge of official function or duties and nothing beyond it.

27) A perusal of the Order dated 16<sup>th</sup> April 2019 and 25<sup>th</sup> April 2019, it would clearly indicate that, the Respondent No. 4 has exceeded his jurisdiction and rejected the request for an open enquiry on unrelated and untenable grounds and for reason best known to it.

28) We find that, the Orders dated 16<sup>th</sup> April 2019 and 25<sup>th</sup> April 2019, are misplaced, misconceived and untenable. What was sought was a permission, to conduct an open enquiry, in a disproportionate asset case, as Mr. Waghmare had not cooperated in the enquiry and not provided the

required information. Being a case of disproportionate assets, in our view section 17(A) ought not to have been resorted to. Furthermore, the Respondent No. 4, in any event, has exceeded its authority and ventured into taking over the role of the investigating agency as envisaged under section 17 of the PC Act, by taking upon itself the task of inquiry, enquiry and investigations. Further, by refusing “previous approval” under section 17(A) of the PC Act, and recording a finding that there is no “disproportionate assets” the Competent Authority has acted without authority, in excess of its power and authority and encroached upon the powers of the Officers under section 17 and 19 of the PC Act. Most shocking, is that the said rejection/refusal for a “previous approval” in a case, where the allegations pertain to disproportionate assets and not “relatable to recommendations made or decision taken by public servant in discharge of official function or duties”. We are of the view, that the Respondent No.4 has clearly and by miles exceeded its power and authority. What was sought from the Respondent No. 4, was “previous approval” to conduct an open enquiry, in view of the fact that, Mr. Waghmare was not co-operating with the Enquiry Officer. The Enquiry Officer, had not sought approval or sanction as is envisaged under section 19 of the PC Act, but only sought permission to conduct an open enquiry so as to enable him to collect, collate and gather information. It appears that the Respondent No. 4, in an overzealous attempt and to protect its Officer, has taken upon himself, the role of the Enquiry Officer. In short, the Respondent no. 4 i.e.

Competent Authority has chosen to investigate the matter and also refuse to sanction for prosecution under section 19 of the PC Act, when in fact he was under a duty and obligation to confine himself to the mandate of section 17(A) of PC Act. This, according to us, cannot be done. It is beyond the scope and ambit of the authority and power conferred upon the Respondent No.4 as the Competent Authority under section 17(A) of the PC Act. What the Respondent No. 4, under section of 17(A) of the PC Act, is required to give “previous approval” for conducting an enquiry or inquiry of investigation into offences committed under the PC Act, when the alleged “*offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties*”. In our view, the Respondent No. 4, at the highest was only required to give approval for an open enquiry as Mr. Waghmare was not co-operating with the Enquiry Officer or to have plainly rejected it, without dissecting the material on record very minutely. Placing reliance on Section 17(A), for passing the Orders dated 16<sup>th</sup> April 2019 and 25<sup>th</sup> April 2019, would be untenable and misplaced. During the course of the hearing, we have repeatedly enquired with the learned senior counsel appearing for Respondent No. 4, to show us the power granted to Respondent No. 4 to conduct and conclude an enquiry or whether the Respondent No. 4 has the authority to take over the role of the Enquiry Officer. Apart from referring to Government Resolutions dated 12<sup>th</sup> March 1981, 3<sup>rd</sup> March 2015, 27<sup>th</sup> July 2015 and 18<sup>th</sup> February 2025, the learned senior counsel appearing for the

Respondent No.4, has not been able to point out any provision of law which allows the Competent Authority under section 17(A) of the PC Act, to take upon itself the power and authority to investigate the matter and or refuse sanction for prosecution. We are of the opinion, that the same cannot be available, for the simple reason that the said power of investigation is a separate and independent power which is vested in authorized officers under section 17 of the PC Act. The Government Resolutions, cannot override the mandate of section 17 and/or 17(A) of the PC Act.

29) In view of the aforesaid discussions and observation, we hold that the Competent Authority under section 17(A) of the PC Act, is required to verify if, the collected material, merits an enquiry or inquiry or investigation and the same can be done only when the alleged offences are “offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties” and not otherwise. Further, even if the offences are relatable to recommendations made or decision taken by public servant in discharge of official functions or duties, the Competent Authority has no power and/or authority under section 17(A) of the PC Act, to conduct an hearing, investigation or get into the merits of the matter and undertake a detailed enquiry and/or conduct a mini trial. The role of the Competent Authority is to only see and consider whether the preliminary material as collected by the Enquiry Officer makes out a prima facie case. The Competent Authority has no authority to usurp the powers of the authorized

Enquiry Officer under section 17 of the PC Act or the power to grant or refuse sanction to prosecute under section 19 of the PC Act.

30) The Competent Authority is not expected to undertake a detailed and exhaustive study of the material available with the Enquiry Officer at the time the approval is sought. Under section 17(A) of the PC Act, the Competent Authority is required to satisfy itself, if the opinion of the Enquiry Officer, that an enquiry or inquiry or investigation is warranted or justified or not. Once a prima facie opinion is arrived at, after perusal of material, the approval follows. Only the existence of a prima facie case is to be looked at, and not clear and incriminating material to establish the guilt. Considering that the allegation are under the PC Act, in our opinion, even a well-founded suspicion, should be suffice and there is no need of a strong suspicion to grant approval.

31) Section 17(A) of the PC Act, confers upon the Competent Authority a discretion, which has to be exercised judiciously and as per the settled judicial principles and not in an arbitrary manner or to suit ones whims and fancies. It cannot be exercised, de hors of the material and the reasons for which it is sought. One need to keep in mind that, at the time of granting previous approval the investigation is in a nascent stage but indicative of strong or well founded suspicion. There is available credible material/information if not incriminating material. It is this credible information, which is the foundation and starting point, which requires

further investigation. In our view, therefore the same has to be considered and analyzed by the Competent Authority only from that stand point.

31.1) The questions framed in para No. 8 above are answered accordingly.

32) In view of the aforesaid facts and circumstances, we are of the view that the impugned Orders dated 16<sup>th</sup> April 2019 and 25<sup>th</sup> April 2019, are without jurisdiction and therefore cannot be sustained. We are of the opinion that, the permission for an open enquiry under Section 17(A) is not required. The present case, being a case of disproportionate assets, the seeking of “previous approval” as envisaged under section 17(A) of the PC Act, would not be applicable. Section 17(A) is not applicable to the present case. The Respondent No. 2 and 3 can proceed in accordance with the law.

33) The impugned Orders dated 16<sup>th</sup> April 2019 and 25<sup>th</sup> April 2019 are required to be set aside. As a result of the same, the action/steps taken by the Authorities based on and pursuant to the impugned Orders dated 16<sup>th</sup> April 2019 and 25<sup>th</sup> April 2019, including all further and consequential Orders passed relating to closing the enquiry would also be required to be set aside.

34) Hence the following order:

- (a) Petition is allowed in terms of prayer clause (a) and (a)(1).
- (b) Prayer Clause (b) (1) is allowed, except that after conducting the open enquiry the Authorities will follow the procedure and process as envisaged in the PC Act and take swift and appropriate action in

accordance with law.

(c) Rule is accordingly made absolute in the aforesaid terms.

**(RANJITSINHA RAJA BHONSALE, J.)**

**(A.S. GADKARI, J.)**

35) At this stage, Mr. Kadam learned Senior Counsel appearing for Respondent No.4 submitted that, the effect and implementation of the present Judgment may be deferred for a period of two weeks from today, so as to enable Respondent No.4 to test its correctness before the Hon'ble Supreme Court.

35.1) At the request of Mr. Kadam, the effect and implementation of the present Judgment is stayed for a period of two weeks from the date of uploading of the present Judgment on the official website of the High Court of Bombay.

**(RANJITSINHA RAJA BHONSALE, J.)**

**(A.S. GADKARI, J.)**