

(8) A perusal of the aforementioned provision nowhere provides that the Regulations framed under this Section are to operate from the date of publication in the Official Gazette. The only provision made is that such regulations could be made by the Corporation with the previous sanction of the appropriate Government by issuing notification in the Official Gazette. Had that been so then regulation framing authority would not have incorporated in Regulation 2 that the Regulations were to come into force with immediate effect i.e. from 27th June, 1996. There is thus, no substance in the stand taken by the Corporation in the written statement and the same is accordingly rejected.

(9) In view of the above, the writ petition succeeds. Consequently, the communications dated 3rd October, 1996 (P-6) and 1st February, 1999(P-12) sent by the respondent-corporation are hereby quashed. A direction is issued to the respondent to release the pensionary benefits to the petitioner after adjusting the provident fund paid to the petitioner. In view of the fact that the petitioner has already availed the benefit under the Provident Fund on account of pendency of the petition, no interest would be admissible to him. These directions be carried within a period of two months from the date of receipt of a certified copy of this order.

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**R.N.R.**

*Before M.M. Kumar and T.P.S. Mann, JJ.*

**NIRMAL SINGH KAHLON,—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

C.W.P. No. 10861 of 2004

5th March, 2008

*Constitution of India, 1950—Art. 226—Indian Penal Code, 1860—Ss. 420, 467 & 120-B—Prevention of Corruption Act, 1988—Ss. 13(1) (d), 13(2) and 19—Notification dated 17th November, 2003 issued by State of Punjab—FIRs against an Ex-Minister under various sections—Govt. issuing notification appointing Special Judge to try offences under 1988 Act—Notification giving*

*jurisdiction to Mohali police station all over State of Punjab in respect of specified cases—Allegations that Ex-Minister abused his office and amassed huge wealth by receiving illegal gratifications while functioning as Minister not part of public duty—Such offences could not be regarded as having been committed by any public servant while acting or purporting to act in discharge of his official duty—No sanction u/s 197 Cr. P.C. is required to be obtained from competent authority—All acts allegedly committed at Chandigarh—Whether Special Judge Mohali has jurisdiction to take cognizance of offences and try cases—Held, yes—Notification creating Court of Special Judge issued in consultation with High Court—Petition liable to be dismissed being without merit.*

*Held*, that the allegations in the FIR levelled against the petitioner could not be regarded as having any proximity with the official duties. It is not part of public duty of a public servant like the petitioner to demand illegal gratification while making recruitments to various posts of Tax Collector, Patwaris, Peons, Clerks etc. and misuse his position by getting the shamlat land on lease for a longer time than permissible. No sanction for such allegations is required.

(Paras 13 & 14)

*Further held*, that the submission of petitioner that the police station at Mohali did not have any jurisdiction to deal with the allegations as every act has been alleged to be committed at Chandigarh, would also not survive. The Court of Special Judge, in fact, was created by the State Government on 5th January, 1990 and the notification was issued in consultation with High Court.

(Para 15)

Ashwani Kumar Chopra, Senior Advocate with Rupa Pathania,  
Advocate, *for the petitioner.*

Rupinder Khosla, Addl. AG, Punjab with Charu Tuli, Sr. DAG, Punjab,  
*for the respondents.*

**M. M. KUMAR, J.**

(1) This instant petition is directed against the notification dated 17th November, 2003 (P-1), appointing Special Judge to try offences under the Prevention of Corruption Act, 1988 (for brevity, 'the Act'), in respect of cases registered at Police Station, Vigilance Bureau, Flying Squad-1, Mohali. A declaration has been sought that the notification dated 17th November, 2003, be declared as unconstitutional and consequently the jurisdiction of the Special Judge be annulled. A further prayer has also been made for quashing order dated 29th May, 2004 (P-4), dismissing the application filed by the petitioner, by the Special Judge by holding that he had requisite jurisdiction to try the case FIR No. 13, dated 14th June, 2002, under Sections 420, 467, 468, 120-B IPC and Section 13(1)(d) and 13(2) of the Act, registered at Police Station, Vigilance Bureau, Flying Squad-1, Mohali.

(2) The matter was earlier considered by a Division Bench of this Court and,—*vide* order dated 2nd September, 2004, the writ petition was dismissed. The aforementioned order was subjected to Special Leave Petition (C) No. 19958 of 2004. The leave to appeal was granted by Hon'ble the Supreme Court on 20th September, 2006, and S.L.P. (C) No. 19958 of 2004 was converted into Civil Appeal No. 4211 of 2006. Hon'ble the Supreme Court has passed the following order :—

“Heard.

Leave granted.

This case was heard along with other cases relating to the scope and ambit of Section 19 of the Prevention of Corruption Act, 1988. We find that the High Court has not kept the actual fact situation so far as this case is concerned and has, by mistake, referred to the factual scenario of some other cases. That being so, it would be appropriate to set aside the order of the High Court and to remit the case to it for a fresh consideration by taking into account the fact situation as applies to the case at hand. We make it clear that we have not expressed any opinion on the merits of the case.

The interim order passed by this court shall continue till the High Court takes up the matter afresh for fresh disposal.

The appeal is accordingly disposed of No. costs.”

(3) The petitioner Nirmal Singh Kahlon was inducted as a Cabinet Minister in the Akali Dal Government during the period 1997 to 2002. The petitioner has alleged that the Congress Chief Minister, Capt. Amarinder Singh, assumed his office and launched a drive against corruption. According to the petitioner this was a motivated and an arbitrary action intended to harass and falsely implicate the former ministers holding different portfolios in the cabinet of Shri Parkash Singh Badal, the then Chief Minister of Shiromani Akali Dal. The Ministers were sought to be involved in false and frivolous cases. Firstly, the State Government issued a notification on 19th December, 2002. A false complaint was made against the petitioner and on 16th May, 2002 an FIR No. 11, under Sections 420, 467, 120-B IPC and Section 13(1)(d) read with Section 13(2) of the Act, was registered against him at Police Station, Mohali. Another FIR No. 13, dated 14th June, 2002, under Sections 420, 467, 468, 120-B IPC and Section 14(1)(d) read with Section 13(2) of the Act was also registered at Police Station, Vigilance Bureau, Flying Squad-1, Mohali. Thereafter the Government also issued notification dated 17th November, 2003, requiring that the cases within the jurisdiction of Police Station, Vigilance Bureau, Flying Squad-1, Mohali, were to be tried by the Special Judge at Ropar. Notifications dated 19th December, 2002 and 17th November, 2003 gave jurisdiction to this police station all over the State of Punjab in respect of specified cases.

(4) In furtherance to FIR No. 13, the investigating agency presented the challan before the Court of Special Judge, Ropar, on 19th September, 2002. The allegations in the challan were made against the petitioner that he abused his office while functioning as Minister and made various appointments to different posts in his department like Clerks, Patwaris, Tax Collectors, Peons etc. In addition to receiving illegal gratifications for these posts, he had also collected money in lieu of transfers and promotions made in the department. In this way he had amassed huge wealth. The petitioner is stated to have collected huge movable and immovable assets, the details of which have been given in the challan. The petitioner is also alleged to have got lease of two acres of Shamlat land in village Pabhat, Tehsil Derabassi, District Patiala. There are specific allegations that he fulfilled the back-log posts in the handicap category, of Gram Sewaks. Deserving candidates were not recruited while

ineligible and unqualified persons were appointed to the posts, for consideration. The appointments to various posts stated to have been made all over the State by misusing his power and office.

(5) After presentation of the challan, the petitioner was summoned by the learned Special Judge, Ropar. The petitioner filed an application challenging the very jurisdiction of the Court of learned Special Judge to take cognizance of the offences and to try the offences registered in FIR No. 13. In this application, he also challenged the legality and validity of the notification, dated 17th November, 2003. This application was disposed of by the learned Special Judge, Ropar holding that it had jurisdiction to take cognizance of the said offence and try the petitioner in accordance with law. The operative part of the order, dated 29th May, 2006, passed by the learned Special Judge, Ropar, reads as under :—

“67. (3) **“State versus Nirmal Singh Khalon”** FIR No. 13 under Sections 420, 467, 468, 471, 120-B IPC, read with Section 13(1)(2) of Prevention of Corruption Act, 1988, Police Station Vigilance Bureau, FS-1, Mohali, District Rupnagar. In this case the said accused had accepted bribes during the period when he was a Minister. However, at the time of taking the cognizance he ceased to be a Minister.

As discussed above, the arguments in these cases have also been addressed on the same lines as in the FIR No. 15. Therefore, findings are the same *qua* the above said cases. Resultantly, this Court has the necessary jurisdiction to try the cases as mentioned above at Sr. No. 1 to 3. This Court has already taken cognizance of the offences as referred to above and the same is proper. Accordingly, the applications/controversies *qua* the jurisdiction and sanction are thus disposed of.”

(6) Aggrieved from the said order, the petitioner has filed the instant writ petition, challenging order dated 29th May, 2004, passed by the learned Special Judge, Ropar, as well as legality and validity of notification dated 17th November, 2003.

(7) It is in these circumstances we are seized of the matter.

(8) Mr. Ashwani Kumar Chopra, learned senior counsel has conceded that since the matter in respect of obtaining sanction under Section 19 of the Act stand concluded by the judgment of Hon'ble the Supreme Court rendered in the case of **Parkash Singh Badal versus State of Punjab, (1)** the issue would not survive for consideration of this Court. He has, however, made four submissions to challenge the impugned order dated 29th May, 2004 (P-4). His first submission is that sanction under Section 197 Cr. P.C. is required to be obtained from the competent authority because the allegations levelled in the FIR would conclusively show that the imputation of various acts alleged to have been committed by the petitioner are closely related to his official duties and that the petitioner deserve to be accorded protection for those acts. His second submission is that the learned Special Judge, Ropar, did not apply his mind to the facts of the present case and has remained unable to deal with various issues raised before him. He has maintained that the order did not discuss independently as to how the petitioner's case is similar to the one decided by the Special Judge along with the instant case. According to the learned counsel, the order passed by the learned Special Judge is cryptic and deserves to be set aside. His next submission is that there are factual discrepancies pointed out by Hon'ble the Supreme Court in the order passed by this Court. The petitioner has been described as an M.L.A. whereas he was a Minister and that sanction was accorded under Section 19 of the Act on 2nd August, 2004. He has lastly submitted that all the offences alleged to have been committed by the petitioner have taken place at Chandigarh and there is no warrant to register a case at Mohali because there is neither any police station at Mohali for dealing cases of this nature nor any cause has arisen in that area. Therefore, the Special Judge, Ropar, would not acquire jurisdiction to try the petitioner once all the alleged acts have been committed at Chandigarh.

(9) Mr. R.S. Khosla, learned State counsel, however, has drawn our attention to para 71 of the judgment of Hon'ble the Supreme Court in the case of **Parkash Singh Badal (supra)** and argued that the issue of sanction under Section 197 Cr. P.C. would not survive because in para 71 it has been laid down by Hon'ble the Supreme Court that the offence of cheating under Section 420 or offences under Sections 467, 468, 471 and

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(1) (2007)1 S.C.C. 1

120-B IPC could not be regarded as having been committed by any public servant while acting or purporting to act in discharge of his official duty because in such cases official status actually provides an opportunity for commission of the offence. Learned State Counsel has then referred to the observations made in para 96 of the judgment to argue that the controversy with regard to notification dated 19th December, 2002, regarding Police Station, Mohali, does not survive as per the observation made in this long para. Therefore, even the other arguments raised by Mr. Chopra has been taken care of.

(10) Having heard learned counsel for the parties, we are of the considered view that this petition is devoid of merit and is, thus liable to be dismissed. A perusal of the allegations made in the FIR would show that the petitioner is alleged to have made recruitments to various posts of Tax Collectors, Patwaris, Peons, Clerks etc. for his benefit by illegal means by taking heavy amounts of money as bribe. The FIR when translated into English, reads thus :—

‘It has come to knowledge that Shri N. S. Kahlon, Ex. Minister Rural Development and Panchayats had during his tenure made recruitments to the various posts of Tax Collector, Patwaris, Peons, Clerks etc. for his benefit by illegal means by taking heavy amounts of money as bribes. In this way for his favorites who were not fulfilling the requirement like less age, less qualification and manipulating the marks in the answer sheet, recruitment were made to P. Sect. and deserving candidates were side lined. Similarly, to fulfill the backing in handicap category recruitments of Gram Sewaks were made and the candidates, who were deserving were not recruited. It has also come to knowledge that Kamalpreet Kaur, Advocate District Fatehgarh Sahib who was fulfilling the basis (basic ?) qualifications in handicap quota for the ‘Mukh Sewak’ was also sidelined. Rs. 3 lacs were demanded from her by sending Manjeet Singh Steno, office of R.D.P. to her residence. When she was not able to give money in bribe, then she was not recruited to the post. In this way, Kahlon has accepted heavy amounts as bribes for transfers, appointments and promotions and he has accumulated movable and immovable assets in

excess of the known resources. This has also come to knowledge that Kahlon has got leased 2 acres of Shamlat land at village Phabhat, Tehsil Dera Bassi, District Patiala for 7 years in the name of his close relative Burwinder Singh s/o Ajnala by misusing his position, whereas Shamlat land cannot be leased out for such a long period. In this way Ex. R.D.P.M. has earned crores of rupees by misusing his position through recruitments, transfers, appointments and promotions and has accumulated countries (?) assets and cash. By misusing his powers, he has made wrong appointments for his benefit and the deserving candidates were overlooked. By doing this Ex.R.D.P.M. has committed crime under Section 420, 467, 468, 120-B IPC, 13(1)(d)(e) read with 13(2). After registering of the case copy of F.I.R. may send to me, I will look into the matter myself.”

(Sd.)-

SURINDER PAL SINGH,

V.B.”

(11) The first allegation against the petitioner is making recruitments to various posts for his benefit by illegal means by taking heavy amounts of money as bribe for his favourites who are not fulfilling the requirement like age, qualification etc. and that the deserving candidates were sidelined. Likewise, the allegations of filling up posts of backlog in handicapped category of Gram Sewaks was made. It has been alleged that one Kamalpreet Kaur, Advocate, District Fatehgarh Sahib, who fulfilled the basic qualification in handicapped quota was ignored and a sum of Rs. 3 lacs was demanded from her by sending one Manjeet Singh, Steno, to her residence. On her failure to make the payment of money, she was not appointed to the post. There are further allegations of purchasing of two acres of shamlat land at village Phabhat, Tehsil Dera Bassi, District Patiala. In this manner, the petitioner is alleged to have committed offences under Sections 420, 467, 468, 120-B IPC read with Section 13(1)(d)(e) read with 13(2) of the Act.

(12) The provisions of Section 197 Cr.P.C. were engrafted with the avowed object of infusing fearlessness in rendering their services by the public servants so as to protect all their acts which are in furtherance of



their official duties. Accordingly, these principles were developed to infuse confidence amongst the public servants and they were accorded legal protection for all their official acts. In that regard judgment of the Constitution Bench of Hon'ble the Supreme Court in the case of **Matajog Dobey versus H.C. Bhari**, (2) deserves special mention. However, it is equally true that in order to enjoy protection under Section 197 Cr.P.C. such a public servant must have committed the offence while acting or purporting to act as public servant. Such a public servant can be said to act or purporting to act in the discharge of his official duties only if his act is such as to lie within the scope of his official duties. Thus, a public servant neither act or purport to act as such when he receives or alleged to have received bribe although the act done by such a public servant may be of such a nature. A medical officer cannot be treated to have acted as public servant when he picks pocket of his patient or outrage the modesty of a female patient while examining them, although the act of medical examination itself may be such an act. It appears to be well settled that there has to be proximity between the official duty and the act alleged to have been committed in order to claim protection of Section 197(1) Cr.P.C. If there is no close proximity and the acts are distantly related to the official duty then protection contemplated by Section 197(1) Cr.P.C. would not be available. All these principles have been considered by Hon'ble the Supreme Court in the case of Parkash Singh Badal (*supra*). Hon'ble the Supreme Court has placed reliance on its earlier judgments in the cases of **Bakhshish Singh Brar versus Gurmeet Kaur**, (3) **P. Arulswami versus State of Madras**, (4) **Matajog Dobey** (*supra*); **Rakesh Kumar Mishra versus State of Bihar**, (5) and **P.K. Pradhan versus State of Sikkim**, (6). The following principles could be deduced from the observations made by Hon'ble the Supreme Court :--

- (i) Protection is only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act ;
- (ii) If in doing public duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance

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(2) AIR 1956 S.C. 44

(3) (1987)4 S.C.C. 663

(4) AIR 1967 S.C. 776

(5) (2006)1 S.C.C. 557

(6) (2001)6 S.C.C. 704

of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection.

- (iii) It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. Act can be performed in discharge of official duty as well as in dereliction thereof.

(13) When the aforementioned principles are applied to the facts of the present case, it becomes evident that by no stretch of imagination the allegations in the FIR levelled against the petitioner could be regarded as having and proximity with the official duties. It is not part of public duty of a public servant like the petitioner to demand illegal gratification while making recruitments to various posts of Tax Collector, Patwaris, Peons, Clerks etc. and misuse his position by getting the shamlat land on lease for a longer time than permissible. In fact, Hon'ble the Supreme Court in para 50 of the judgment in Parkash Singh Badal's case (*supra*) has observed that "*the offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence*". Therefore, the first argument raised by the petitioner falls to the ground.

(14) The learned Special Judge, Ropar, in the impugned order dated 29th May, 2004 may not have specifically discussed the allegations levelled against the petitioner, yet, he has deduced the principles applied to the cases of Sarvshri Parkash Singh Badal and Sukhbir Singh Badal. It cannot be concluded that the impugned order lacks application of mind and on that score is liable to be set aside. In any case, we have closely examined the contents of the FIR registered against the petitioner and we can safely come to the conclusion that no sanction for such allegations is required, as has already been concluded in the preceding para. the factual mistake pointed out by Mr. Chopra, learned senior counsel for the petitioner, has also been taken note. In any case, in his capacity as a minister, the petitioner has to be regarded as a public servant, as has been held by Hon'ble the

Supreme Court in the case of **P.V. Narasimha Rao versus State (CBI/SPE), (7)**.

(15) The last submission of Mr. Chopra that the police station at Mohali did not have any jurisdiction to deal with the allegations as every act has been alleged to be committed at Chandigarh, would also not survive as it has been dealt with in paras 75, 76 and 77 of the judgment of Hon'ble the Supreme Court in Parkash Singh Badal's case (*supra*), which refers to notifications dated 31st October, 1994, 19th December, 2002 and 17th November, 2003. In para 76, it has further been noticed that the Court of Special Judge, in fact, was created by the State Government on 5th January, 1990 and the notification was issued in consultation with the High Court. It would be apposite to read with paras, which are as under :—

“75. So far as conferment of jurisdiction on the police station over the whole State is concerned, it appears that the same was created on 31st October, 1994 by the then Government of Chandigarh (Punjab ?) and by order dated 20th April, 1995 the office of Superintendent of Police, Vigilance Flying Squad-I/Criminal Investigation Agency, Chandigarh was shifted to Police Station Mohali. This order continued to operate subsequently. As rightly contended by learned counsel for the respondent State, the fresh notification was issued creating some more police stations *qua* other districts. It is pointed out that PS Mohali falls within Ropar District and within the area of Special Judge, Ropar as was specified in consultation with the Punjab and Haryana High Court. The Special Judges are transferred by the High Court and, therefore, the allegation of choosing any Special Judge with oblique motive is clearly without any substance. The notification regarding the reorganization of the police station with Police Station Mohali having jurisdiction over the whole State of Punjab was notified on 19th December, 2002.

76. At this juncture, it is relevant to note that allegations of impropriety were because of the notification dated 17th November, 2003 relating to jurisdiction of the Special Judge.

A few relevant aspects need to be noted at this juncture. The Court of Special Judge, Ropar was created by the notification dated 5th January, 1990 of the State Government which was issued in consultation with the High Court for the area of Ropar District. Another notification was issued on 5th September, 2000 in consultation with the High Court. By this notification, Sessions Judges in the State of Punjab were appointed as Special Judges within their respective districts. The notification dated 31st October, 1994 creating PS Chandigarh with Statewide jurisdiction which was shifted to PS Mohali by order dated 20th April, 1995 was already in existence when Sessions Judges were made Special Judges. There is no dispute about this fact.

77. The controversy revolves around the notification dated 19th October, 2002 regarding PS Mohali with Statewide jurisdiction. According to learned counsel for the respondent State it represents a continuity and there was no new creation. So far as the notification dated 17th November, 2003 is concerned, undisputedly, the expression used is "appoint". It was clarified that though the said expression has been used, it did not actually mean appointment of a Sessions Judge and First Additional Sessions Judge, Ropar as Special Judges. They were already appointed and designated as stated in the notification itself. What was intended related to allocation of cases registered at PS Mohali to the existing Courts of Special Judges, Ropar. There is also no dispute that PS Mohali falls within the area of District Ropar over which Special Judges, Ropar had jurisdiction as approved by the High Court."

(16) As a sequel of the above discussion, we find no merit in the instant petition and the same is hereby dismissed. It is further clarified that the trial Court shall not be influenced by any observation made in this order by considering it as an expression of opinion on the merits of the controversy. In view of the fact that proceedings have remained stayed, the Special Judge, Ropar, is directed to proceed with the matter expeditiously.