

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

Cr.R. No.1629/2022

Between:-

**SHRI BAINI PRASAD CHANSORIYA, S/O
SHRI RAMPAL CHANSORIYA, AGED
ABOUT 59 YEARS, OCCUPATION
SENIOR LECTURER, GOVT.
EXCELLENCE SCHOOL CHHATARPUR,
DISTRICT CHHATARPUR (M.P.)
REGISTERED DISTT. OFFICE
CHOUBEY COLONY, CHHATARPUR
(M.P.)**

.....PETITIONER

***(BY SHRI ASHOK LALWANI WITH SHRI BRAMHA NAND
PANDEY, ADVOCATES)***

AND

- 1. THE STATE OF MADHYA
PRADESH THROUGH PRINCIPAL
SECRETARY, DEPT. OF SCHOOL
EDUCATION VALLABH BHAWAN
BHOPAL (M.P.)**
- 2. COMMISSIONER, RAJYA SHIKSHA
KENDRA, PUSHTAK BHAWAN
ARERA HILLS, BHOPAL.**

3. **COLLECTOR CHHATARPUR
DISTT.CHHATARPUR (M.P).**
4. **(D.P.C.) DISTRICT PROJECT
COORDINATOR, CHHATARPUR
DISTT.CHHATARPUR (M.P.)**
5. **SUPERINTENDENT OF POLICE
SPECIAL POLICE
ESTABLISHMENT (LOKAYUKT)
SAGAR, DISTT.SAGAR (M.P).**
6. **VEERENDRA KHARE
(PRESIDENT) PRAJATI SHEEL
VIKLANG SANSAAR
CHHATARPUR THROUGH
COLLECTOR
DISTT.CHHATARPUR (M.P).**
7. **SANTOSH SHARMA, DISTRICT
EDUCATION OFFICER DISTT.
CHHATARPUR THE THEN
DISTRICT ROJECT CORDINATOR
(M.P).**
8. **COMMISSIONER, DEPUTY AND
SOCIAL JUSTICE BHOPAL DISTT.
BHOPAL (M.P.)**

....RESPONDENTS

(BY SHRI ABHIJEET AWASTHY, ADVOCATE FOR LOKAYUKT)

Reserved on : 27.07.2022

Passed on : 09.12.2022

Per: Sheel Nagu, J.

ORDER

Revisional jurisdiction of this Court u/S.397 of Cr.P.C. is invoked by this petition to assail final order dated 21.06.2021 (Annexure-P/8) passed in UNCR (Unregistered Case) No.109/2021 by Special Judge (PC Act), Chhatarpur rejecting an application u/S 156(3) of Cr.P.C. preferred by petitioner in his capacity as District President of Madhya Pradesh Rajya Patrit Adhikari Sang alleging offences punishable u/S 13 of the Prevention of Corruption Act, 1988 (PC Act) and u/Ss. 420, 467, 468 and 471 read with Section 120-B of IPC against respondent Nos.6 & 7 herein.

2. Reason assigned by learned Special Judge for rejecting the application u/S 156(3) of Cr.P.C. is want of sanction for prosecution by the competent authority in the light of law laid down by Apex Court in *Anil Kumar and others Vs. M.K. Aiyappa and another*, (2013) 10 SCC 705.

3. Learned counsel for rival parties are heard at length on the question of admission so also final disposal.

4. The undisputed attending facts herein are as follows:

- (i) The offence alleged in the application u/S 156(3) of Cr.P.C. are based on incidents which took place in the year 2012 (Prior to 28.07.2016 when Section 17-A was brought on the statute book of PC Act).
- (ii) The M.P. Gazetted Officer Association through the petitioner herein preferred Writ Petition No.172185/2020 seeking direction to the police to register offences alleged against the respondent Nos.6 & 7 herein. This Writ Petition No.17285/2020 was finally dismissed on 24.02.2021

vide Annexure-P/6 as having been withdrawn with liberty to petitioner to avail remedy available u/S 156(3) or u/S 200 of Cr.P.C

- (iii) Availing the aforesaid liberty, petitioner filed application application u/S 156(3) of Cr.P.C. dated 05.04.2021 vide Annexure-P/7.
- (iv) The aforesaid application u/S 156(3) of Cr.P.C. suffered dismissal by the impugned order dated 21.06.2021 on the ground of want of sanction for prosecution and the law laid down by Apex Court in **Anil Kumar** (supra).
- (v) Indisputably, neither any FIR has been lodged nor any criminal court has taken cognizance of the offence alleged by petitioner till date.
- (vi) The law laid down in the case of *Anil Kumar* (supra) has been doubted by Apex Court in it's subsequent verdict rendered by three Judges in ***Manju Surana Vs. Sunil Arora and others, (2018) 5 SCC 557*** by posing the question that whether any direction can be passed by Magistrate u/S 156 (3) alleging offence punishable under PC Act without prior sanction for prosecution or not. The said question has been referred to larger Bench, which is yet to pronounce it's verdict.
- (vii) The nature of allegations made in the application u/S 156(3) of Cr.P.C. in the case in hand are alleged to lie in the realm of "recommendations made" or "decisions taken" by respondent Nos.6 & 7 while discharging their official duties as public servants and thus Sec.17-A of PC Act becomes relevant.
- (viii) Substantive, as well as procedural provisions of PC Act underwent widespread amendment by Prevention of Corruption (Amendment)

Act, 2018 which came into force from 26.07.2018 *inter alia* introducing Section 17-A in the PC Act, which statutorily prohibited Police Officer from conducting enquiry or inquiry or investigation into any offence punishable under PC Act arising from “recommendation made” or “decision taken” by public servant without previous approval of competent authority.

5. Before proceeding to adjudicate the dispute, it is apt to reproduce Section 17-A which was inducted in PC Act w.e.f. 26.07.2018, as follows:

“17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.-

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—

- (a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;*
- (b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;*
- (c) 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:*

Provided 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:

Provided further that the concerned authority shall convey its decision under this 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.

[Emphasis Supplied]

6. Bare perusal of the aforesaid Section 17-A reveals that prohibition for making an enquiry or inquiry or investigation is against the Police Officer and not against a Judicial Officer/Court. It is only at the stage when Police Officer embarks upon preliminary enquiry to assess as to whether the first information alleges commission of cognizable offence of the nature enumerated in Section 17-A under PC Act or not, that prior approval from competent authority is required to be obtained as a prerequisite. In absence of approval, Police Officer is statutorily prohibited to conduct enquiry, inquiry or investigation. This necessarily implies that without approval u/S. 17-A, the Police cannot enquire/inquire/investigate into any offence of the nature enumerated in Section 17-A under PC Act. This prohibition includes bar against registration of offence since enquiry (as contemplated by Para 120(ii), (v), (vi) & (vii) of (2014) 2 SCC 1 (*Lalita Kumari Vs. Government of U.P. and others*) is a precursor to registration of offence.

6.1 A close scrutiny of Section 17-A of PC Act reveals that the object of this provision is to protect public servant from frivolous and malicious prosecution as is the object of Section 19. However, the legislature has chosen to use the expression “approval” instead of “sanction”. The dictionary meaning of “approval” and “sanction” is as follows:

Dictionary meaning and usage of APPROVAL

As per Oxford English Dictionary	As per Webster's Dictionary Thesaurus	New and	As per Black's Law Dictionary	As per Collins Cobuild English Dictionary
The action of approving, A favourable opinion	Approving		The act of confirming, Ratifying, Sanctioning or consenting to some act or thing done by another	<p>1. If you win someone's approval for something that you ask for or suggest, they agree to it.</p> <p>2. Approval is a formal or official statement that something is acceptable</p> <p>3. If someone or something has your approval, you like and admire them.</p> <p>4. If a person or organization gives something their seal of approval or their stamp of approval, they officially say that they admire or like it, or that they think it is acceptable.</p>

Dictionary meaning and usage of SANCTION

As per Oxford English Dictionary	As per Webster's Dictionary Thesaurus	New and	As per Black's Law Dictionary	As per Collins Cobuild English Dictionary
A threatened penalty for disobeying a law or rule. Measures taken by a State to coerce another to confirm to an international	Solemn ratification; Express permission; authorization; approval; legal use of force to secure obedience to law; anything which		1 To assent, concur, confirm, or ratify 2. In the original sense of the word, a penalty or punishment provided as a means of	If someone in authority sanctions an action or practice, they officially approve of it and allow it to be done. Sanctions are

<p>agreement or norms of conduct. A consideration operating to enforce obedience to any rule of conduct. Official permission or approval for an action. Official confirmation or ratification of a law. A law or decree, especially an ecclesiastical one. Give official sanction for. Impose a sanction or penalty on</p>	<p>serves to secure obedience to law; anything which serves to move a person to observe or refrain from given mode of conduct; to confirm; to authorize; to countenance; measures to enforce fulfillment of international treaty obligations.</p>	<p>enforcing obedience to a law; and, in a still wider sense, an authorization of anything. Occasionally, “sanction” is used to denote a statute, the part being used to denote the whole. The vindicatory part of a law, or that part which ordains or denounces a penalty for its violation.</p>	<p>measures taken by countries to restrict trade and official contact with a country that has broken international law. A sanction is a severe course of action which is intended to make people obey instructions, customs, or laws. If a country or an authority sanctions another country or a person for doing something, it declares that the country or person is guilty of doing it and imposes sanctions on them.</p>
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6.2 Since the term “approval” is neither defined in the PC Act nor in Cr.P.C., one has to fall back upon the dictionary meaning of the phrases. From the aforesaid dictionary meanings and usage of said two expressions, it is apparent that the cardinal difference is that “approval” is used in general context while the expression “sanction” is used in official, formal and legal context. Moreso, “approval” denotes giving consent while “sanction” is grant of formal permission to do something or to impose/authorize punishment. This Court need not enter into the realm of knowing the exact meaning of these two expressions since the issue involved herein does not expect this court to do so.

6.3 It is pertinent to point out that Section 17-A is attracted only when the offence alleged under the PC Act relates to the Act of “recommendation made or decision taken” but is not attracted when offence relates to demand or acceptance of bribe, taking of illegal gratification or disproportionate assets etc. Since the instant case involves allegations which allegedly arise from recommendation made or decision taken, the provision of Section 17-A gets attracted herein.

7. Pertinently, the Apex Court in *State of Telengana Vs. Managipet @ Mangipet Sarveshwar Reddy, 2019 (19) SCC 87* while interpreting the scope and ambit of Section 17A of PC Act held that this provision applies to FIRs registered on or after 26.07.2018 when Section 17A became operational. This position of law was reiterated by Apex Court in *State of Rajasthan Vs. Tejmal Choudhary, 2022 LiveLaw (SC) 158* by laying down that Section 17-A is not retrospective in operation.

8. In the given facts and circumstances, the law as enunciated by Apex Court is required to be taken as touchstone to assess the legality and validity of impugned order rejecting application u/S 156(3) of Cr.P.C.

8.1 In *Anil Kumar* (supra), the Apex Court was faced with factual scenario in pre-amendment era (i.e. prior to 26.07.2018). The Apex Court in *Anil Kumar* (supra) thus had no occasion to deal with Section 17-A for the obvious reason that said provision did not exist when *Anil Kumar* (supra) was decided. *Anil Kumar* (supra) was decided by Apex Court in the backdrop of factual matrix where an application u/S 156(3) alleging offence *inter alia* under PC Act was allowed by the Special Judge directing for investigation by Police whereafter the accused successfully approached the High Court of

Karnataka which quashed the order of Special Judge holding that no such direction can be passed in the absence of sanction for prosecution. Apex Court in *Anil Kumar* (supra) dismissed the petition filed by the complainant upholding the order of the High Court. Meaning thereby that *Anil Kumar* (supra) laid down that before passing any order u/S.156(3), grant of sanction for prosecution is necessary as a pre-condition. The relevant portion of the said judgment of *Anil Kumar* (supra) is reproduced below:

“15. The judgments referred to herein above clearly indicate that the word “cognizance” has a wider connotation and not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 Cr.P.C. and the next step to be taken is to follow up under Section 202 Cr.P.C. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage.

16. A Special Judge is deemed to be a Magistrate under Section 5(4) of the PC Act and, therefore, clothed with all the magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two options : he may take cognizance of the offence under Section 190 Cr.P.C. or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) Cr.P.C. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) Cr.P.C.

17. We may now examine whether, in the above mentioned legal situation, the requirement of sanction is a pre-condition for ordering investigation under Section 156(3) Cr.P.C., even at a pre-cognizance stage.

18. Section 2(c) of the PC Act deals with the definition of the expression “public servant” and provides under Clauses (viii) and (xii) as under:

“2 (c) (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty.

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.”

19. The relevant provision for sanction is given in Section 19(1) of the PC Act, which reads as under:

*“19. Previous sanction necessary for prosecution.—
(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction—*

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.”

20. *Section 19(3) of the PC Act also has some relevance; the operative portion of the same is extracted hereunder:*

“19. (3) – Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) -

(a) no finding, sentence or order passed by a special judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;

*(b)-(c) * * **

21. *The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers*

under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh and Subramanian Swamy cases.”

9. The decision in **Anil Kumar** (supra) does not lay down the law in respect of Section 17-A of PC Act. Pertinently, the pre-amended PC Act extended protection of sanction to public servants only once i. e. at the stage of taking cognizance of the offence by trial Court but not at pre-cognizance stage. However, the protection of sanction at the pre-cognizance stage was made available by means of purposive interpretation by the judicial verdict in **Anil Kumar** (supra). Insertion of Section 17-A in PC Act w.e.f. 26.07.2018, protection at the pre-cognizance stage became statutorily available. Therefore, to ascertain the extent and sweep of the protection and prohibition prescribed at pre-cognizance stage by Section 17-A, the words and phrases employed therein will alone have to be looked into.

9.1 On coming into effect of Section 17-A from 26.07.2018, the statutory prohibition became operational but only against the police to conduct any enquiry/inquiry/investigation into any offence of the nature contemplated by Sec. 17-A, unless approval for doing so is obtained from authority competent to remove the accused.

9.2 Thus, the textual interpretation of Section 17A reveals in clear terms that the statutory bar to conduct enquiry/inquiry/investigation, without approval, is against Police Officer but not against the Court.

9.3 It is thus clear that neither enquiry (informal enquiry as contemplated in para 120 (ii), (v), (vi) & (vii) of Apex Court's decision in **Lalita Kumari Vs. Govt. of U.P. & Ors (supra)** nor inquiry (formal inquiry as defined in Sec.2(g)

of Cr.PC) nor investigation can be conducted by Police Officer in the absence of grant of approval by the competent authority. Therefore, on receipt of complaint, containing allegation of commission of offence under PC Act arising from allegation of “recommendation made” or “decision taken” by a public servant, a Police Officer is statutorily prohibited from conducting enquiry/inquiry/investigation unless approval is obtained from competent authority u/S. 17-A.

9.4 Importantly the statutory prohibition u/S 17-A against the Police Officer does not restrict the Special Court from entering into the realm of enquiry/inquiry which may be necessary prior to registration of offence even in the absence of approval from competent authority u/S 17-A.

9.5 However, the extent of enquiry/inquiry which a Special Court can conduct in the absence of approval is merely to achieve the object of ascertaining whether contents of Section 156(3) application *prima facie* reveal commission of offence of the nature contemplated u/S 17-A and punishable under PC Act or not.

9.6 If the Special Court finds that 156(3) application reveals commission of offence of nature contemplated by Section 17-A of PC Act, then before the next step of directing police to submit report or to register offence or to conduct enquiry can be given, approval as *sine qua non* ought to be obtained from competent authority u/S 17-A.

9.7 Responsibility of obtaining approval from the competent authority u/S. 17-A lies on the shoulders of the complainant who prefers the application 156(3) Cr.P.C.

9.8 However, in view of 2nd proviso to Section 17-A, if the approval is not granted by the competent authority within three months extendable by one month, the complainant is not left remediless. The complainant can very well approach the superior court for seeking appropriate writ/direction.

10. The aforesaid steps taken by Special Court on an application u/S 156(3) Cr.PC alleging offences under PC Act arising from acts of recommendation made or decision taken will not run contrary to the decision of Apex Court in *Anil Kumar* (supra). Reasons for this are not far to see.

10.1 The first being that the verdict in *Anil Kumar* (supra) was rendered during pre-amendment era when Section 17-A was not part of the Statute Book and thus is not a precedent *qua* Sec.17-A PC Act.

10.2 Secondly, the legislature w.e.f. 26.07.2018 created a new provision in shape of Section 17-A PC Act extending additional protective umbrella against false and malicious prosecution *qua* offences punishable under PC Act arising from “recommendation made” or “decision taken” by public servant in discharge of official functions/duties. In the pre-amendment era, Section 19 of PC Act was the only provision extending protective umbrella to public servants which was available in respect of all kinds of offences under PC Act, but only at the stage when Court takes cognizance after investigation is complete.

10.3 Secondly, the statutory prohibition u/S 17-A binds the hands of Police from conducting enquiry/inquiry/investigation *sans* approval. Such prohibition was not statutorily prescribed prior to 26.07.2018 Therefore, the

true import of Sec.17-A can be derived from textual and contextual interpretation of this provision alone without the aid of Anil Kumar (supra).

10.4 Thirdly, Sec. 17-A does not bar the Special Court from conducting enquiry or inquiry (as defined in Sec. 2(g) Cr.P.C.). Argument may be raised that though Special Court is not statutorily barred from conducting enquiry/inquiry but occasions may arise where the Special Court for aid and assistance may direct Police to conduct enquiry/inquiry leading to an impasse in the face of statutory bar u/S.17-A prohibiting Police Officer from proceeding ahead. True it is that Police Officer alone has been restrained from conducting enquiry/inquiry/investigation but the said argument can be put to rest by the well established principle of law that what cannot be done directly in law also cannot be done indirectly. [See: ***Gian Singh Vs. State of Punjab and another, (2010) 15 SCC 118 Para 7***]. Therefore, the enquiry/inquiry can very well be conducted u/S. 17-A by Special Court but without involving the police. The Special Court is thus not prevented from conducting enquiry/inquiry at its own level while dealing with an application u/S. 156(3) Cr.P.C. but without assistance of the police. In this manner, the sweep, extent and object of Sec. 17-A remains unoffended.

10.5 Thus, the verdict of ***Anil Kumar*** (supra) will not come in the way of trial Court while deciding an application u/S 156(3) Cr.P.C. for the reason of ***Anil Kumar*** (supra) not being the law *qua* Sec. 17A and also that the legal bar contained therein restrains the Police but not the Court. Moreso, the decision in ***Anil Kumar*** (supra) has been doubted by Apex Court in ***Manju Surana*** (supra) *inter alia* for the reason of Anil Kumar (supra) failing to consider three - Judge Bench verdict in ***R.R. Chari Vs. State of U.P., (AIR 1951 SC***

207) wherein the Apex Court profitably quoted its earlier verdict in ***Subramanian Swamy Vs. Monmohan Singh and another*, 2012 (3) SCC 64**. Pertinently ***Subramanian Swamy (supra)*** at para 35, extracts the Three Judge Bench decision in ***R.R. Chari (supra)*** which is reproduced as follows:-

35. In R. R. Chari v. State of U.P., the three Judge Bench approved the following observations made by the Calcutta High Court in Superintendent and Remembrancer of Legal Affairs Vs. Abni Kumar Banerjee (supra):

"What is taking cognizance has not been defined in the Criminal Procedure Code, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence under section 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter, - proceeding under section 200 and thereafter sending it for inquiry and report under section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g. ordering investigation under section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

[Emphasis Supplied]

10.6 Thus, non-consideration of R.R. Chari (Three – Judge Bench decision) in Anil Kumar (Two- Judge Bench decision) impelled the Apex Court in Manju Surana to doubt the precedential value Anil Kumar before referring the case to larger Bench.

10.7 Reverting to the factual matrix attending the present case, it is seen that learned Special Judge rejected the application u/S. 156(3) without conducting any enquiry or inquiry (as defined u/S2(g) Cr.P.C.) for at-least coming to a tentative view that the application u/S. 156(3) contains allegations which reveal commission of cognizable offence punishable under PC Act or not arising from decision taken or recommendation made. Thus reliance placed by learned Special Judge on the decision of *Anil Kumar* (supra), for the reasons mentioned (supra) is misplaced.

11. This Court thus finds the following jurisdictional errors in the impugned order:

- (i) Learned Special Judge failed to conduct enquiry to come to a tentative finding as to whether the application u/S 156(3) disclosed commission of cognizable offence punishable under PC Act or not arising from acts of recommendation made or decision taken.
- (ii) Learned Special Judge failed to see that statutory prohibition u/S 17-A in conducting enquiry/inquiry/investigation is against the Police Officer but not the Court (to the extent of enquiry or inquiry).
- (iii) Reliance placed upon Section 19(1) of PC Act is misdirected since the relevant provision is Section 17-A.
- (iv) The decision of Apex Court in *Anil Kumar* (supra) was not a precedent in respect of Section 17-A of PC Act.

12. Consequently, this Court in the backdrop of aforesaid discussion finds substance in this petition.

13. Accordingly, this petition is **allowed** and the order dated 21.06.2021 (Annexure-P/8) passed in UNCR No.109/2021 by Special Judge (PC Act), Chhatarpur is set aside with direction to the learned Special Judge to reconsider the application u/S.156(3) dated 05.04.2021 (Annexure-P/7) in terms of the directions in para 9 & 10 of the instant order.

(SHEEL NAGU)
JUDGE

(DWARKA DHISH BANSAL)
JUDGE

Biswal