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Permission to Prosecute

The independence of criminal investigation from the executive is a sine qua non for success of a criminal justice system — this assumes even more significance in corruption cases where allegations are made against a public servant who is a part of the executive which controls the police.

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What do the section 19 of Prevention of Corruption act, 1988 says?

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- Section 19 imposes a bar on the court to take “cognisance” of an offence till sanction is obtained from the government. The bar is against the court to take cognisance for the purposes of trial.
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- Section 19 of the PC Act states: “No court shall take cognisance of an offence… alleged to have been committed by a public servant except with the previous sanction.”
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- The provision aims to balance two competing interests.
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- One is the need to ensure that an honest public servant is not hounded in the performance of his or her duties by frivolous complaints.
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- The other is that investigation into an allegation of crime isn’t muted at the threshold due to the power wielded by a public servant.
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- There is no prohibition either under the PC Act or the Criminal Procedure Code (CrPC) to start an investigation by lodging an FIR or through a court-initiated investigation under Section 156(3) CrPC.
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What the court says?

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- A two-judge bench in Anil Kumar vs. M.K. Aiyappa (2013) appears to have unsettled the law on this subject.
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- The court held that Section 19, PC Act applies at the threshold itself and an application under Section 156(3) CrPC for investigation is not maintainable without obtaining prior sanction of the competent authority.
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- This has recently been followed by the Supreme Court in L. Narayana Swamy vs State (2016).
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- While the decisions in Aiyappa and Narayana Swamy take the view that even an investigation cannot be ordered under Section 156(3) CrPC without sanction, larger benches of the apex court have taken a diametrically opposite view.
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- The conflicting views of the Supreme Court on the precondition of "sanction" for prosecution of a public servant under Section 19 of the Prevention of Corruption (PC) Act, 1988 have created a legal dilemma which could be exploited by unscrupulous public servants to stifle a criminal investigation.
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Do all the courts agree with the same point?

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- In R.R. Chari vs State 1951, the court held that there was no requirement of sanction for ordering an investigation under Section 156(3)CrPC.
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- In State of Rajasthan vs Raj Kumar (1998), it was held that there was no requirement for sanction before filing a chargesheet under Section 173 CrPC.
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- The larger bench decisions rightly take the view that any investigation into a crime cannot be stifled at the threshold itself by giving power to the executive to scuttle it through sanction.
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- A bench of five judges of the apex court in Subramanian Swami vs Union of India (2014) held that Section 6A of the Delhi Special Police Establishment Act, which had required prior sanction for investigation into crimes by high-ranking public servants, was unconstitutional.

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- It was held that investigation is central to the criminal justice system and cannot be subverted by imposing a restriction on the police at the threshold itself.
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- The court held that: “If there is an accusation of bribery, graft, illegal gratification or criminal misconduct against a public servant”, the status of the offender is not relevant.
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Anomalies

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- If this is the stated legal position, then there is no rationale as to why a court should be precluded from directing an investigation under Section 156(3)CrPC without sanction — but the practical consequences of Aiyappa and Narayana Swamy result in prohibiting even the issuance of a direction for investigation by a court under Section 156(3) CrPC.
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- These judgments could give a handle to the executive to scuttle a potential investigation; a high-ranked public servant could influence the police not to set criminal law in motion by registering an FIR. And the hands of the court would be tied.
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- The court in Aiyappa and Narayana Swamy may have accidentally left a loophole for influential public servants accused of corruption to nip an investigation in the bud.
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- Interestingly, several high courts have started to openly disregard Aiyappa. The Kerala High Court in Maneesh vs State held the judgment in Aiyappa was not binding on it.
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- It is thus imperative that the Supreme Court render an authoritative pronouncement and correct the apparent anomalies in the state of the law on sanction.
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