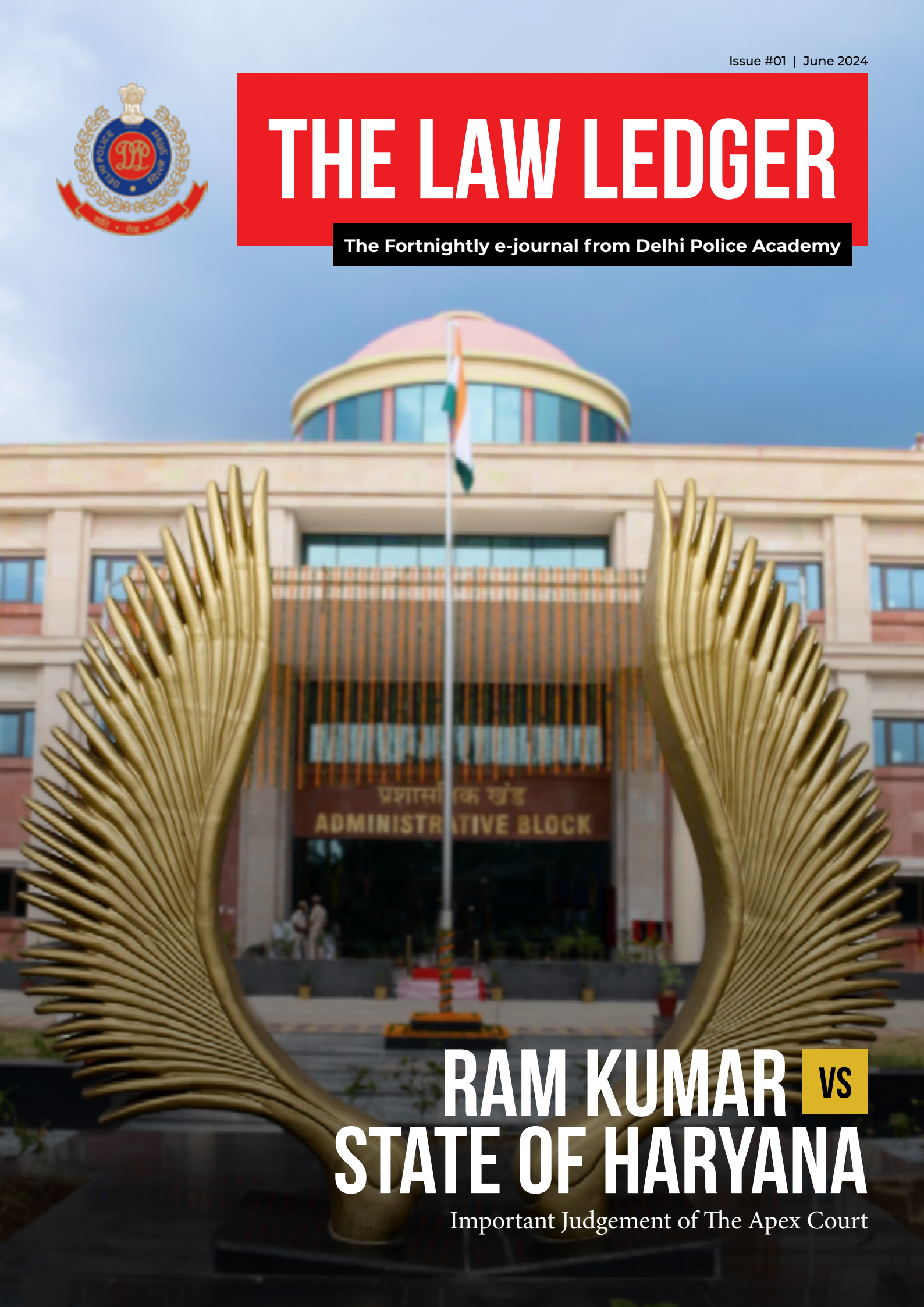
Issue #01 | June 2024

THE LAW LEDGER

The Fortnightly e-journal from Delhi Police Academy



RAM KUMAR VS STATE OF HARYANA

Important Judgement of The Apex Court

Important Judgement of The Apex Court

Ram Kumar Vs. State Of Haryana

BRIEF OF THE JUDGEMENT

(Criminal Appeal no. 25 of 1987) 1 SCC 476
Date: 13 January, 1987

Link to the complete Judgement

FACTS OF THE CASE

In the case at hand, the appellant faced charges in court for allegedly using excessive force while performing official duties. However, the trial court proceeded with the case without obtaining prior sanction from the State Government, as required by **Section 197(2)** read with **Section 197(3)** of the **CrPC**. The appellant filed a special appeal in the Hon'ble Supreme Court against the order of the High Court.

ISSUES ADVANCED

In cases involving the prosecution of members of the Armed Forces for their actions in maintaining public order, the legislative framework provides two safeguards. According to Section 132 of the Code of Criminal Procedure, prosecution cannot proceed without prior "sanction to prosecute" from the relevant government authority. Section 197 of the CrPC further prohibits any court from taking cognizance of such offenses without prior "sanction to take cognizance" from the appropriate government.

1. Can a sanction to prosecute be a substitute for sanction to take cognizance?
2. Whether the two sanctions are the same or serve two altogether different purposes?

JUDGEMENT

In the present judgment Hon'ble Supreme Court discussed about six significant points of difference between Section 132 and Section 197 CrPC which are as follows:

i. The two sanctions are addressed to altogether different persons. While sanction under Section 132 CrPC is addressed to intending the complainant, sanction under 197 CrPC is addressed to the Magistrate presiding over a Court.

ii. The two sanctions serve two altogether different purposes. While the sanction under Section 132 CrPC clothes the intending complainant with authority to institute a complaint and set the machinery of the criminal court in action, the sanction under Section 197 CrPC clothes the court with the jurisdiction to take cognizance of the offence. Without the former, the intending complainant cannot trigger the proceedings, without the latter the Magistrate cannot have seisin over the matter or act in the matter.

iii. The absence of sanction in each case visits different persons with different consequences. Absence of the former disables the intending complainant whereas absence of the latter disables the court.

iv. The disability operates in two spheres. Want of sanction under Section 132 renders the complainant invalid. Want of sanction under Section 197 vitiates all the proceedings in the court. For want of the former, the complainant cannot complain, for want of the latter the court cannot try the case.

v. The sanctioning authority has to address itself to different questions. In regard to a sanction u/s 132 CrPC the question to be answered is whether the intending complainant is a suitable person to be authorized for prosecuting the matter in good faith. In regard to the sanction under Section 197 the question to be answered is which particular court should be empowered to try the case. So also in granting sanction u/s 197 CrPC the sanctioning authority has to consider whether or not to exercise the powers u/s 197(4) CrPC to specify "the person by whom, the manner in which, and the offence or offences for which" the concerned public servant should be tried and "the court before which the trial is to be held". The authority seized of the matter in the context of sanction under Section 132 CrPC does not have to address himself to these questions and in fact has no competence in this behalf.

vi. One is an authority to an individual to 'prosecute' the alleged offender, the other is an authority to 'try' the alleged offender.

The Hon'ble Supreme court held that sanction under Section 132 CrPC is no substitute for a prosecution sanction under Section 197 CrPC. Even if there is a sanction u/s 132 CrPC still the investigating agency is required to obtain sanction u/s 197 CrPC from the Competent Authority and if the charge sheet is filed without sanction u/s 197 CrPC, Magistrate cannot take cognizance of the offence.