

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO.2509 OF 2022**

Digitally
signed by
SHAILAJA
SHRIKANT
HALKUDE
Date:
2026.07.09
18:53:38
+0530

Sanjay Bapuso Dalvi]
Aged: 57 years, occ. Service]
R/at: Swapnapurti Apartments,]
Raman Mala, Tal. Karvir,]
Dist. Kolhapur] **Petitioner**

v/s

1. **The State of Maharashtra**]
2. **Yasin B. Mankapure**]
Age: 56 years, Occ. Agriculturist]
R/at. Rendal, Tal. Hatkanangale,]
Dist. Kolhapur.] **Respondents**

WITH

CRIMINAL WRIT PETITION NO.2511 OF 2022

1. **Mahesh Suresh Kore**]
Aged: 48 years, Occ. Service,]
R/at: Thorat Chowk, Ichalkaranji]
Kolhapur.]
2. **Namdev Dadu Chougule**]
Age: 47 years, Occ. Service]
R/at: Plot No.6, Vitthal Rukmini]
Nagar, Kolhapur] **Petitioners**

v/s

1. **The State of Maharashtra**]
2. **Yasin B. Mankapure**]
Age: 56 years, Occ. Agriculturist]

R/at. Rendal, Tal. Hatkanangale,]
Dist. Kolhapur.] Respondents

.....

Mr. P. D. Dalvi a/w Mr. Tejas Shelake a/w Ms. Sonal Nalawade, for the Petitioners.

Mr. Shriram S. Chaudhari, A.P.P, for Respondent No.1 – State.

Mr. Aditya Raktade, for Respondent No.2.

.....

CORAM : SANDESH D. PATIL, J.
RESERVED ON : 22nd June, 2026.
PRONOUNCED ON : 9th July, 2026.

JUDGMENT:

1. **Rule.** Rule is made returnable forthwith. By consent of the learned counsel for the parties, the petitions are taken up for final disposal.

2. The Petitioner in Writ Petition No. 2509 of 2022 and the Petitioners in Writ Petition No. 2511 of 2022 have challenged the orders dated 8th April, 2022 passed by the learned Additional Sessions Judge, Ichalkaranji, in Criminal Revision Application No. 21 of 2022 and Criminal Revision Application No.23 of 2022, respectively. By the impugned orders, the learned Additional Sessions Judge dismissed the aforesaid Revision Applications, which had been preferred against the

order dated 24th November, 2021 passed by the learned Judicial Magistrate First Class, Court No. 3, Ichalkaranji, below Exhibit 97 in Regular Criminal Case No.88 of 2009, whereby process came to be issued against the present Petitioner in Writ Petition No. 2509 of 2022 and the Petitioners in Writ Petition No. 2511 of 2022.

3. The petitioners are the original accused. Respondent No.2 is the resident of village Rendal, Taluka Hatkanangale, District Kolhapur. The petitioner in Writ Petition No.2509 of 2022 - accused No.1 was Police Inspector posted at Shivaji Nagar Police Station, Ichalkaranji at the time of the incident. The Petitioners in Writ Petition No. 2511 of 2022 Accused Nos. 2 & 6 were Police Constables posted at that relevant time at the Shivaji Nagar Police Station. It is the case of respondent No.2- (hereby referred as complainant) that on 25th November, 2008, accused No.7 informed respondent No.2 as well as one Tajuddin Mujawar that they were called at Shivaji Nagar Police Station (hereinafter referred to as "Police Station"). They were again called on the next day i.e on 26th November, 2008. The complainant alongwith one Tajuddin Mujawar went to the Police Station on 26th November, 2008 at 12.30 p.m. They

were asked to wait. They were not given any food. After 10.00 p.m, the Police Constable asked the complainant to come inside and persuaded the complainant to confess commission of murder of one Ghudussab Tambat. Accused No.5 told accused No.6 to beat the complainant with belt. The complainant was severely assaulted. The complainant went on repeating that he has no knowledge about murder but Accused No.3, 5 and 6 continued to abuse the complainant and slapped him. Accused No.1 also asked the complainant whether he would confess crime or not. Accused No.2 to 6 continued beating the complainant till morning. The complainant then proceeds to narrate the physical assault committed by the accused.

4. On 27th November, 2008, accused No.4 came near the complainant and told him that they have called a doctor. The doctor came and upon examination of the complainant opined that condition of the complainant was serious and suggested to take the complainant to hospital.

5. On receipt of the complaint dated 27th February, 2009 by the then Judicial Magistrate First Class, Ichalkaranji, the same was kept for verification. Verification of the complainant was recorded on 23rd March, 2009. Vide an order dated 14th September, 2009, J.M.F.C, Ichalkaranji directed Dy. SP. Ichalkaranji to investigate into the matter and submit the report under section 202 of the Cr. P.C. Later on, since the report was not filed by the Dy.S.P on 23rd March, 2011, J.M.F.C, Ichalkaranji dispensed with the report. Learned J.M.F.C asked the complainant to file his own evidence. The complainant examined Dr. Imtiyaz Sultan Pathan as witness No.2 and Tajuddin Mujawar as witness No.3. In the interregnum, Dy. S.P Ichalkaranji filed a report on 22nd April, 2010. The said report revealed that investigation was not thorough, therefore, the same was discarded.

6. After perusing the evidence led by the complainant before the Magistrate, the learned Magistrate observed that there are serious allegations of grievous injuries to the complainant due to custodial torture. The Magistrate considered question of pre-sanction under section 197 of Cr.P.C. The Magistrate relied upon the judgment in case

of **Choudhari Parveen Sultana vs. State of West Bengal and another**,¹ which observed that it was not part of the duty to threaten the complainant or her husband to withdraw the complaint. Learned Magistrate observed that there was no question of requirement of sanction of prosecution under section 197 of the Cr. P.C. and ultimately passed the following order;

:ORDER:

- “1. There are sufficient grounds to proceed against the accused No.1 to 7 for the offences u/s’s 326, 325, 324, 342, 348, 504, 506 r/w. 34 of the Indian Penal Code.*
- 2. Issue process in the form of summons against accused No.1 to 7 for the offences u/s.s 326, 325, 324, 342, 348, 504, 506 r/w. 34 of the Indian Penal Code on PF*
- 3. Summons returnable on next date”.*

7. Being aggrieved and dissatisfied by the order dated 20th August, 2013, the petitioners preferred an application below Exhibit-97 in Regular Criminal Case No.88 of 2009 for discharge. Learned Magistrate after hearing the parties, refused to discharge the petitioners and ultimately vide the judgment and order dated 24th November, 2021 dismissed the application below Exhibit 97.

¹ A.I.R 2009 SC 1404

8. Being aggrieved and dissatisfied with the judgment and order passed by the learned J.M.F.C, the petitioners preferred Criminal Revision Application No.21 of 2022 & Criminal Revision Application No. 23 of 2022. The learned Additional Sessions Judge, Ichalkaranji, after hearing the parties, dismissed both the Revision Application by orders dated 8th April, 2022. Hence, the present petitions are filed.

9. Mr. Dalvi, learned counsel appearing for the petitioners submits that the petitioners were always acting in discharge of the official duty. He submitted that in absence of any sanction from the appropriate Authority under section 197 of Cr. P.C, the learned Magistrate ought not to have issued process against the petitioners. He stated that section 197 is inserted by the legislature in the Cr. P.C with an object of protecting the public servants in discharge of their duties. He submitted that if the complaints were done in discharge of official duty then the trial must be stayed unless sanction is obtained. He submitted that protection given under section 197 of the Cr.PC is to protect responsible public servants against institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while

they are acting or purporting to act as public servants. He further submitted that both the courts below were wrong in interpreting section 197 of the Cr.P.C. He submitted that this is a case of no sanction at all. He submitted that the issue of police acting in 'excess of his duty' during investigation and requirement of sanction for prosecution was considered by the Apex Court in the case of **State of Orissa and others vs. Ganesh Chandra Jew**,². He submitted that if a person while doing his official duty, has acted in excess of his duty, but there is reasonable connection between the act and the performance of official duty, excess will not be sufficient ground to deprive the public servant of the protection. He also relied on the judgment in case of **Rizwan Ahmed Javed Shaikh and others Vs. Jammal Patel and others**³ to buttress the said submission. He also relied on the judgment in case of **D. T. Virupakshappa Vs. C. Subash**,⁴ and judgment of Single Bench of this Court in case of **Shailesh Haribhau Jagtap Vs. Rahul Suresh Khetre and another**,⁵ to buttress the same submission that even if act was done in discharge of official duty notwithstanding the fact that there was an excess, since it was connected with the discharge of official duty, it was

2 AIR 2004 Supreme Court 2179

3 AIR 2001 Supreme Court 2198

4 Criminal Appeal No.722 of 2015

5 Criminal Writ Petition No.4673 of 2017

imperative to obtain sanction under section 197 of the Cr. P.C. He also relied on the judgment in case of **Matajog Dobey Vs. H. C. Bhari**⁶. He invited my attention to relevant paragraphs i.e paragraphs 17 and 18.

“17. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in section 197 of the Code; “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty”. But the difference is only in language and not in substance.

The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. Nor question of sanction can arise under section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits.

What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation. In Hori Ram Singh v. Emperor’ AIR 1939 FC 43 At P. 51 Sulaiman, J. observes:

“The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction”.

6 AIR 1956 SC 44

The interpretation that found favour with Varadachariar, J. in the same case is stated by him in these terms at page 56: "There must be something in the nature of the act complained of that attaches it to the official character of the person doing it". In affirming this view, the Judicial Committee of the Privy Council observe in Gill's case (A)'

A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty The test may well be whether the public servant, if challenged, can reasonably claim that what he does, he does in virtue of his office".

AIR 1939 FC 43 (B) is referred to with approval in the later case of H.T. Huntley v. Emperor, AIR 1944 FC 66 © but the test laid down that it must be established that the act complained of was an official act appears to us unduly to narrow down the scope of the protection afforded by section 197 of the Criminal Procedure Code as defined and understood in the earlier case. The decision in Albert West Meads v. The King AIR 1948 PC 156 (D) does not carry us any further; it adopts the reasoning in Gill's case(A).

18. *There are two cases of this Court to which reference may be made here. In Shreekantiah Ramayya Munipalli v. The State of Bombay (s) AIR 1955 SC 287 at pp. 292-293 (E) Bose, J. observes as follows:*

"Now it is obvious that if section 197 of the Code of Criminal Procedure is construed too narrowly, it can never be applied, for of course, it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning".

The question of previous sanction also arose in Amrik Singh v. The State of PEPSU (S) AIR 1955 SC 309 at p. 312 (F), A fairly lengthy discussion of the authorities is followed up with this summary:

"If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required".

10. He prayed for allowing the petitions and setting aside the orders passed by the Revisional Court.

11. Learned counsel appearing for respondent No.2-complainant contended that the alleged offence was not committed while discharging public duty. He submitted that it was not official duty of the officers to use third degree treatment upon respondent No.2-complainant. He submitted that crime is committed under the cloak of the authority for the public servant's own pleasure and benefit and such act will not be protected under section 197 of the Cr.PC.. He submits that the same issue was considered by the learned Magistrate while issuing process in the matter on 20th August, 2013. Thereafter, the same was considered by the learned Magistrate while dismissing the application for discharge under section 245 on 24th November, 2021 and thereafter once again by the learned Additional Sessions Judge,

Ichalkaranji vide order passed in Criminal Revision Application No.21 of 2022 on 8th April, 2022. He submitted that concurrently all the Courts below have held in favour of the complainant. He submitted that the complainant was admitted in hospital for more than four days and was paralyzed due to which there was delay of three months in filing the complaint. He submitted that the treatment meted out to the complainant was of a cruel, inhuman, and degrading nature. It was obviously not the work of Police Authorities to give such inhuman treatment to the complainant. He submitted that both the Courts below have correctly considered the position and dismissed the application for discharge. He prayed for dismissal of the petitions.

12. Learned A.P.P, on the other hand, has relied on the judgment of this Court in case of **Pradeep Bhimrao Bhosale and others versus Sate of Maharashtra passed on 1st August, 2025**⁷. He has stated that the petitioners have not acted in their official duty and, therefore, impugned judgment and orders were correct and require no interference. He prayed for dismissal of the petitions.

7 Writ Petition No.2231 of 2025

13. I have heard learned counsel appearing for the petitioners, learned A.P.P, appearing for respondent No.1 – State and learned counsel for respondent No.2. I have also perused the judgments relied on by the learned counsel for the petitioners as well as the respondents, copies of the writ petitions and order dated 20th August, 2013, whereby the learned Judicial Magistrate First Class, Ichalkaranji has ordered issuance of process against accused Nos.1 to 7 for the offences punishable under Sections 326, 325, 324, 342, 348, 504, 506 read with Section 34 of the Indian Penal Code, 1860. I have also perused the evidence which was tendered by the witnesses of the complainant. An application was preferred by the petitioners under section 245 of the Cr.P.C. where they had contended that the acts which were committed by them were committed while discharging official duty. My attention was invited by the learned Counsel appearing for the petitioners to the order dated 24th November, 2021 whereby the application preferred by the petitioners was rejected by passing a detailed order below Exhibit 97. This order was challenged by the petitioners in Criminal Revision Application No.21 of 2022 and Criminal Revision Application No.23 of 2022, both of which were also rejected by orders dated 8th April, 2022.

14. The basic contention of the petitioners is that, assuming for argument purpose without admitting that they had committed the offence, yet they were discharging their duty and that since the petitioners were discharging the official duty, they could not have been prosecuted and process could not have been issued against them without taking sanction from the competent authority. The petitioners basically contended that sanction was necessary before issuance of the process, and that the prosecution was not maintainable in absence of the sanction.

15. The law which requires sanction is found in section 197 of the Cr.P.C. Section 197 of the Cr. P.C reads as under;

“197. Prosecution of Judges and public servants.-

(1)When any person who is or was a Judge or Magistrate or a public servant not removable from his officer save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]-

(a)in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

[Explanation. - For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354-D, section 370, section 375, section 376, [section 376A, section 376AB, section 376C, section 376-D, section 376-DA, section 376-DB,] or section 509 of the Indian Penal Code.] (45 of 1860)]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members (of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

16. The Hon’ble Apex Court in the matter of **Matajog Dobe** (*supra*) has considered the purport of section 197. The Full Bench of the Hon’ble Apex Court has held that the offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. The question of sanction can arise under section 197 only when the act complained of is an offence; the only point to determine is whether it was committed in discharge of official duty. The Apex Court observed that there must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the

duty, as this question will arise only at a later stage when the trial proceeds on the merits.

17. While dealing with such an issue of sanction under section 197, what is required to be found is, whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in performance of the official duty, though possibly in excess of the needs and requirement of the situation, and is not merely a cloak for doing the objectionable act.

18. The Hon'ble Apex Court in the judgment of **D. T. Virupakshappa (supra)** while dealing with the issue of 'police excess' has considered the judgments on this issue of sanction under section 197. The Hon'ble Apex Court in paragraph No. 9 of the said Judgment was pleased to observe as under.

*“9. In **Om Prakash** (supra), this Court, after referring to various decisions, particularly pertaining to the police excess, summed-up the guidelines at paragraph-32, which reads as follows:*

32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his

official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant Singh). The protection given under Section 197 of the Code has certain limits and is available 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. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection (Ganesh Chandra Jew). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood.”

(Emphasis supplied)

19. The Apex Court, in the judgment of **Devinder Singh and other versus State of Punjab through CBI**⁸ has culled out the principles where sanction is necessary. The relevant paragraphs are reproduced below;

“ 39. The principles emerging from the aforesaid decisions are summarized hereunder:

39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

8 (2016) 12 SCC 87

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 Code of Criminal Procedure has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection Under Section 197 Code of Criminal Procedure There cannot be a universal Rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary Under Section 197 Code of Criminal Procedure, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 Code of Criminal Procedure would apply.

39.5. In case sanction is necessary it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.

39.7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty was. Accused has the right to lead evidence in support of his case on merits.

39.9. In some case it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.

40. In the instant cases, the allegation as per the prosecution case it was a case of fake encounter or death caused by torture whereas the defence of the accused person is that it was a case in discharge of official duty and as the deceased was involved in the terrorist activities and while maintaining law and order the incident has taken place. The incident was in the course of discharge of official duty. Considering the aforesaid principles in case the version of the prosecution is found to be correct there is no requirement of any sanction. However it would be open to the accused persons to adduce the evidence in defence and to submit such other materials on record indicating that the incident has taken place in discharge of their official duties and the orders passed earlier would not come in the way of the trial court to decide the question afresh in the light of the aforesaid principles from stage to stage or even at the time of conclusion of the trial at the time of judgment. As at this stage it cannot be said which version is correct. The trial court has prima facie to proceed on the basis of prosecution version and can re-decide the question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to the notice of the court that there was a reasonable nexus of the incident with discharge of official duty, the court shall re-examine the question of sanction and take decision in accordance with law. The trial to proceed on the aforesaid basis. Accordingly, we dispose of the appeals/writ petition in the light of the aforesaid directions.”

20. The Apex Court in the case of **Bhagwan Prasad Srivastava versus N.P. Mishra**⁹ has considered the object and purpose underlined in section 197 as under;

“4. The object and purpose underlying this section is to afford protection to public servants against frivolous, vexatious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. The larger interest of efficiency of State administration demands that public servants should be free to perform their official duty fearlessly and undeterred by apprehension of their possible prosecution at the instance of private parties to whom annoyance or injury may have been caused by their legitimate acts done in the discharge of their official duty. This section is designed to facilitate effective and unhampered performance of their official duty 'by public servants by providing for scrutiny into the allegations of commission of offence by them by their superior authorities and prior sanction for their prosecution as a condition precedent to the cognizance of the cases against them by the courts. It is neither to be too narrowly construed nor too widely. Too narrow and pedantic construction may render it otiose for it is no part of an official duty- and never can be - to commit an offence. In our view, it is not the "duty" which requires examination so much as the "act" because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. One must also guard against too wide a construction because in our constitutional set up the idea of legal equality or of universal subjection of all citizens to one law administered by the ordinary courts has been pushed to its utmost limits by enshrining equality before the law in our fundamental principles. Broadly speaking, with us no man, whatever his rank or condition is above the law and every official from the highest down to the lowest is under the same responsibility for every act done without legal justification as,, any other citizen. In construing Section 197, CrPC., therefore, a line has to be drawn between the narrow inner circle of strict official duties and acts

9 (1970) 2 SCC 56

outside the scope of official duties. According to the decision of this Court in Matajog Dubey v. H. C. Bhari(1) cited by Shri Sarjoo Prasad on behalf of the appellant there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable claim, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. In Amrik Singh v. The State of Pepsu (2) this Court said :

"It is not every offence committed by a public servant that requires sanction for prosecution under section 197 (1) of the Code of Criminal procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could 'be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution.,."

Recently in Baijnath Gupta v. State of M.P.(3) this Court further explained that it is the quality of the act that is important and if it falls within the scope and range of the official duties of the public servant concerned the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted.

5. The principle embodied in this section seems to be well understood; the difficulty normally lies is in its application to the facts of a given case. The question whether a particular act is done by a public servant in the discharge of his official duty is substantially one of fact to be determined on the circumstances of each case. In the present case the alleged offence consists of the use of defamatory and abusive words and of getting the complainant forcibly turned out of the operation theatre by the cook. There is nothing on the record to show that this was a part of the official duty

of the appellant as Civil Surgeon or that it was so directly connected with the performance of his official duty that without so acting he could not have property discharged it.”

21. The Apex Court had in case of ***PP Unnikrishnan and another versus Puttyyottil Alikutty and another***¹⁰ while dealing with almost similar case observed in paragraph Nos.19 and 21, which read as under;

19. Even under Section 197 of the Code no protection has been granted to public servants for the type of acts alleged in the case against the appellants. Decisions are a legion relating to the scope of the protection under Section 197(1) of the Code. In Matajog Dobey vs. H.C. Bhari this Court made a slight deviation from the view adopted by the Judicial Committee of the Privy Council in Gills case . This Court after referring to earlier decisions summed up the scope of Section 197(1) of the Code thus:

“There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty”.

21. If a police officer dealing with law and order duty uses force against unruly persons, either in his own defence or in defence of others and exceeds such right it may amount to an offence. But such offence might fall within the amplitude of Section 197 of the Code as well as Section 64(3) of the K.P. Act. But if a police officer assaults a prisoner inside a lock-up he cannot claim such act to be connected with the discharge of his authority or exercise of his duty unless he establishes that he did such acts in his defence or in defence of others or any property.”.

10 (2000) 8 SCC 131

22. In a similar case in *Choudhary Parveen Sultana versus State of West Bengal and another*¹¹ where issue of sanction under section 197 arose in a matter where the husband of the appellant therein was shot and suffered grievous injury to his right eye by the Police under the pretext of conducting investigation. The Apex Court in paragraph 21 has held as under;

“21. We have already indicated that we are unable to accept such a view. In our view, the offences complained of cannot be said to part of the duties of the Investigating Officer while investigating an offence alleged to have been committed. It was no part of his duties to threaten the complainant or her husband to withdraw the complaint. In order to apply the bar of Section 197 Cr.PC. each case has to be considered in its own fact situation in order to arrive at a finding as to whether the protection of Section 197 Cr.PC. could be given to the public servant. The fact situation in the complaint in this case is such that it does not bring the case within the ambit of Section 197 and the High Court erred in quashing the same as far as the respondent No.2 is concerned. The complaint prima facie makes out offences alleged to have been committed by respondent No.2 which were not part of his official duties”.

23. The Apex Court in the case of **Devinder Singh and others** (supra), while dealing with the issue of sanction has observed as follows:

37. In Satyavir Singh Rathi, v. State, this Court has referred to the decision in B.Saha’s case and laid down that the question of sanction has to be seen with respect to the stage and material

11 (2009) 3 SCC 398

brought on record up to that stage. Whether allegation of misappropriation is true or false is not to be gone into at this stage in considering the question whether sanction for prosecution was or was not necessary. The criminal acts attributed to the accused were taken as alleged. This Court has observed as under :

“87. Both these judgments were followed in Atma Ram case AIR 1966 SC 1786 where the question was as to whether the action of a police officer in beating and confining a person suspected of having stolen goods in his possession could be said to be under colour of duty. It was held as under:(AIR pp. 1787-88, para 3)

“3. ... The provisions of Sections 161 and 163 of the Criminal Procedure Code emphasise the fact that a police officer is prohibited from beating or confining persons with a view to induce them to make statements. In view of the statutory prohibition it cannot, possibly, be said that the acts complained of, in this case, are acts done by the respondents under the colour of their duty or authority. In our opinion, there is no connection, in this case between the acts complained of and the office of the respondents and the duties and obligations imposed on them by law. On the other hand, the alleged acts fall completely outside the scope of the duties of the respondents and they are not entitled, therefore, to the mantle of protection conferred by Section 161(1) of the Bombay Police Act.”

88. Similar views have been expressed in Bhanuprasad Hariprasad Dave case AIR 1968 SC 1323 wherein the allegations against the police officer were of taking advantage of his position and attempting to coerce a person to give him bribe. The plea of colour of duty was negated by this Court and it was observed as under: (AIR p. 1328, para 9)

“9. ... All that can be said in the present case is that the first appellant, a police officer, taking advantage of his position as a police officer and availing himself of the opportunity afforded by the letter Madhukanta handed over to him, coerced Ramanlal to pay illegal gratification to him. This cannot be said to have been done under colour of duty. The charge against the second appellant is that he aided the first appellant in his illegal activity.”

94. In B. Saha case this Court was dealing primarily with the question as to whether sanction under Section 197 CrPC was required where a Customs Officer had misappropriated the goods that he had seized and put them to his own use. While dealing with this submission, it was also observed as under: (SCC p. 184, para 14)

“14. Thus, the material brought on the record up to the stage when the question of want of sanction was raised by the appellants, contained a clear allegation against the appellants about the commission of an offence under Section 409 of the Penal Code. To elaborate, it was substantially alleged that the appellants had seized the goods and were holding them in trust in the discharge of their official duty, for being dealt with or disposed of in accordance with law, but in dishonest breach of that trust, they criminally misappropriated or converted those goods. Whether this allegation or charge is true or false, is not to be gone into at this stage. In considering the question whether sanction for prosecution was or was not necessary, these criminal acts attributed to the accused are to be taken as alleged.”

(emphasis in original)

This Court has held that in case there is an act of beating a person suspected of a crime of confining him or sending him away in an injured condition, it cannot be said that police at that

time were engaged in investigation and the acts were done or intended to be done under the provisions of law. Act of beating and confining a person illegally is outside the purview of the duties”.

24. Thus, view of the Apex Court is consistent that it is not the duty of the Police Officer to assault the accused or any person who is brought before the Police Officer for the purpose of investigation of a crime. In this case, respondent No.2 was called by the Police Officers to the Police Station and was kept in the confinement of the dungeons for the investigation of the crime. Thereafter they allegedly assaulted the said person. It is admitted case by both the parties that respondent No.2 was called by the Police Officers to the Police Station for the purpose of investigation. It is, at this juncture, the complainant claims that they he was confined and brutally assaulted by the Police Officers for getting a confessional statement. In such circumstances, going by the dictum of the Apex Court in the judgments referred above, it is clear that it was not the duty of the Police Officer to assault any person while investigation of the crime. The Police Officers cannot under the guise of investigation, use third degree treatment against any person. The Learned Magistrate while issuing process against the

accused/petitioners had considered section 197 of the Cr. P.C and held that it was not the duty of the Police Officer to inflict such injury. The revisions preferred by the petitioners before the Additional Sessions Judge, Ichalkaranji were also dismissed by the learned Judge. Much emphasis was laid by the learned counsel for the petitioners that paragraph 19 of the impugned judgment and order was totally incorrect interpretation of section 197. It is no doubt true that section 197 was incorrectly interpreted while giving reasoning in paragraph 19, however, remaining part of the judgment and order cannot be said to be incorrect and contrary to the provisions of law. Therefore, assuming for argument purpose that section 197 was not properly worded and was not correct interpretation of law as evident in para 19 of the impugned judgment and order, only on the basis of paragraph 19 of the impugned judgment and order dated 8th April, 2022, it cannot be said that rest of the findings would be vitiated and would require interference by this court.

25. At this stage, facts on record as they are revealed are sufficient to conclude that going by the case of prosecution as it is, inflicting injury of such nature was not warranted at the hands of the Police Officer. It

cannot be said that the Police Officers were discharging duty or were acting in excess of the discharge of duty. In the present case, assaulting the suspect for a confessional statement would never be said to be an act in discharge of official duty and, therefore, the provisions of section 197 would not come in the way of the prosecution. Resultantly, orders passed by the learned J.M.F.C - 3rd Ichalkaranji dated 24th November, 2021 in R.C.C No.88 of 2009 and the judgment and order passed by the Additional Sessions Judge, Ichalkaranji dated 8th April, 2022 in Criminal Revision Application No.21 of 2022 and Criminal Revision Application No.23 of 2022 cannot be said to be erroneous, hence they require no interference.

26. Before parting, once again I would like to refer to observations in paragraph Nos.39.8 and 39.9 in *Devinder Singh and others* (supra) which read as under;

“39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty was. Accused has the right to lead evidence in support of his case on merits.

39.9. In some case it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.

27. In a subsequent stage of trial, however, if sufficient evidence is brought on record by the accused which gives rise to an inference that accused were discharging their duties then certainly this issue of sanction can be once again gone into.

28. From the material which is in hand at this stage, it would not be proper to come to a conclusion that the petitioners were discharging their official duties. Resultantly, the impugned judgments and orders do not require any interference and the petitions deserve to be dismissed. Hence, the following order.

: ORDER :

[1] The Criminal Writ Petition No.2509 of 2022 and Criminal Writ Petition No.2511 of 2022 are dismissed.

[2] Rule is discharged.

[3] Criminal Writ Petitions are disposed of.

[SANDESH D. PATIL, J.]