IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3155 OF 2026

Sachin Sawant S/o. Shri. Balasaheb Sawant .. Petitioner

Versus

The Union of India and Anr. .. Respondents

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- Mr. Mithilesh Mishra a/w Mr. Hrituraj Singh, Ms. Namasvi Bhanushali, Mr. Pradeep Dubey, Mr. Rushan Balsara, Ms. Dnyaneshwari Hadawale, Advocates for Petitioner.
- Mr. Prashant Mishra, Special Counsel a/w Ms. Purva Birla, Ms. Shruti Chande, Mr. Bharat Jadhav, Mr. Krish Kariya, Mr. Akshun Thakur, Ms. Tisha Thakkar, Mr. Ketan Gavhane, Advocates for Respondent No.1 – ED.
- Ms. Anuja S. Gotad, APP for Respondent No.2 – State.

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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 18, 2026.

JUDGEMENT:

1. Heard Mr. Mithlesh Mishra, learned Advocate for Petitioner; Mr. Prashant Mishra, learned Special Counsel for Respondent No.1 – ED and Ms. Gotad, learned APP for Respondent No.2 – State.

2. Present Petition is filed under Article 227 of the Constitution of India seeking to quash and set aside sanction order dated 31.08.2023 passed by learned Special Court under the Prevention of Money Laundering Act, 2002 (for short '**PMLA, 2002**'), Greater Bombay, taking cognizance of complaint in connection with ECIR/MBZO-I/69/2022 dated 13.12.2022 registered with they Directorate of Enforcement, Mumbai Zonal Unit, Mumbai, for offences punishable under Sections 3 and 4 of PMLA, 2002.

3. Brief relevant facts are stated herein under so as to enable the court to determine the above raised question of applicability of Section 197(1)(a) of the Code of Criminal Procedure, 1973 (for short 'CrPC')in the present case:-

3.1. It is case of prosecution that CBI, ACB, Mumbai received information that Petitioner i.e. Mr. Sachin Sawant, Joint Commissioner of Customs, IRS (Customs & Central Excise: 2008) during the period from 12.01.2011 to 31.08.2020 amassed huge assets in his name and in the name of his family members i.e. wife, father and mother and they incurred huge expenditure to the tune of Rs.2,45,78,579/- which was disproportionate to his legal sources of income.

3.2. It is alleged that Petitioner layered the money into bank accounts of companies owned and controlled by his close friend Smt. Shashi Prabha Chauhan, which was further integrated in bank accounts of his family members and sister-in-law in the guise of salary given to them on monthly basis. It is alleged that Petitioner and his father took multiple loans against property, gold loans, agricultural loans and unsecured loans in the bank accounts maintained by him.

3.3. Further, *modus operandi* alleged is that purchase of property was made by him through banking channel and loans were taken to conceal the real source of funds. It is alleged that almost all repayments of those loans was done by way of depositing cash in the

bank accounts and further transferring the same to the loan accounts. It is alleged that this activity clearly indicated generation of Proceeds of Crime (POC) and in this way Petitioner projected his tainted money as untainted. Prosecution complaint demonstrates how POC was generated and its further trail with available end use by way of flow charts.

3.4. Pursuant to the said information, FIR bearing No.RC0262022A0010 was registered with ACB, Mumbai against Petitioner for offences punishable under Sections 13(2) r/w 13(1)(b) and 13(1)(e) of the Prevention of Corruption Act, 1988 and Section 109 of Indian Penal Code, 1860. Petitioner was never arrested in connection with said FIR and no final report has been filed in the predicate offence till date and same is still under investigation by CBI.

4. Petitioner challenges the cognizance taken by learned Special Court vide order dated 31.08.2023 on the ground that Petitioner being a Public Servant, it was necessary for Respondent No.1 to obtain prior sanction of the Competent Authority for prosecution under sub-section (1) of Section 197 of CrPC. This not having been obtained, challenge is maintained to the sanction order dated 31.08.2023.

5. Mr. Mithilesh Mishra, learned Advocate for Petitioner would submit that Respondent No.1 – ED acted in flagrant violation of the

statutory provisions enacted by legislature as well as in utter disregard of settled principles of law laid down by this Court and the Supreme Court in commencing prosecution against Petitioner. He would submit that Respondent No.1 failed to comply with the mandatory requirement of Section 197 of CrPC thereby vitiating the very institution of the complaint. He would submit that order dated 31.08.2023 passed by learned Special Court taking cognizance is *ex facie* illegal, unsustainable and liable to be set aside as it is in gross violation of the mandatory provision of Section 197 of CrPC.

5.1. He would submit that Petitioner was a civil servant during the relevant period and was not removable form his office save by or with the sanction of the Competent Authority i.e. the Central Government. He would submit that Central Government was the competent authority to grant sanction for Petitioner's prosecution. He would submit that in such circumstances Respondent No.1 was mandatorily required to obtain prior sanction before filing the complaint and in the absence of such sanction having been obtained, the learned Special Court ought not to have taken cognizance of the complaint. In support of his above submissions he has relied upon the decisions of Supreme Court in the cases of ***Directorate of Enforcement Vs. Bibhu Prasad Acharya and Ors.***[1] and ***P. K. Pradhan Vs. State of Sikkim***[2]***.***

1 (2025) 1 SCC 404
2 (2001) 6 SCC 704

5.2. He would submit that such defect is not curable and goes to the very root of the proceedings, thereby rendering all subsequent actions including continued prosecution legally unsustainable. He would submit that acts and omissions of Respondent No.1 being in contravention of the due process of law have resulted in violation of the Petitioner's fundamental rights as guaranteed under the Constitution of India. He would submit that proceedings have not progressed in any meaningful manner, *inter alia*, on account of multiple legal infirmities including but not limited to the absence of the mandatory prior sanction before filing of the complaint.

5.3. He would submit that since the very validity of filing of the complaint is under challenge on the aforesaid ground, the question as to whether the order taking cognizance was lawful at its inception also arises for consideration and adjudication by this Court. Hence he would persuade the Court to allow the present Petition.

6. ***PER CONTRA***, Mr. Prashant Mishra, learned Special Counsel in his usual fairmindedness contends that admittedly Petitioner was a public servant, rather employee of the Central Government and if he is required to be prosecuted, prior sanction under Section 197(1)(a) of CrPC is required provided that his prosecution is for acts committed in the course of his normal day to day duties assigned to him. The aforesaid is the subtle distinction which the Court is called upon to

adjudicate by Respondent No.1 and it is contended that absence of sanction will not preclude the Court from taking cognizance.

6.1. He has referred to a decision in the case of ***P. K. Pradhan*** *(2nd supra)* and contrary to submissions made by Petitioner would submit that where the official status merely furnishes the occasion or opportunity for commission of the alleged offence and there is no reasonable connection with official duty, protection under Section 197 is not attracted. He would submit that the above decision further recognizes that depending upon the nature of the allegations and material required for determination, the question of sanction may arise at different stages of proceedings.

6.2. Next he would submit that a public servant while exercising an official statutory power is alleged to have exercised that power improperly or in excess, the act may still bear the requisite nexus with official duty which is the principle illustrated in the case of ***Directorate of Enforcement*** *(1st supra)* wherein allegations themselves concerned allotment of land and allocation of water, i.e. matters falling within official functions of the concerned public servants. However, he would submit that there is no corresponding official act which forms foundation of the prosecution against Petitioner in the present case.

6.3. He would submit that prosecution of Petitioner arises from allegations concerning acquisition, possession, concealment, layering,

use and projection of alleged proceeds of crime arising from the scheduled offence concerning disproportionate assets. He would submit that acts constituting the alleged offence of money laundering, as set out in the prosecution complaint are not alleged to consist of any governmental decision, statutory order, administrative action or other act performed by Petitioner in discharge of an official function. He would submit that Petitioner's attempt to derive the requisite nexus merely from the fact that he happened to be a public servant during the relevant period is therefore misconceived.

6.4. He would submit that protection under Section 197 of CrPC is not attracted merely because the accused is a public servant. He would submit that alleged act must bear a reasonable connection with discharge of official duty and must fall within the scope and range of such duty. He has referred to and relied upon following decisions of other High Courts in the cases of ***Pooja Singhal Vs. Directorate of Enforcement, Union of India represented through its Assistant Director (PMLA)***[3] and ***Vanimisetty Gopala Reddy Vs. Union of India, Ministry of Finance North Block, New Delhi, Represented by its Secretary, and Others*** [4] in support of his case. He would submit that even if Petitioner's grievances concerning individual investigative steps are considered independently, they cannot provide a legal route to the relief presently sought namely, quashing the order of cognizance on

3 2025 SCC OnLine Jhar 3961
4 2026 SCC OnLine TS 2694

the ground of want of sanction. Therefore, he would submit that in the light of aforesaid submissions, present Petition be dismissed.

7. Ms. Gotad, learned APP for Respondent No.2 – State would adopt the submissions advanced by Mr. Prashant Mishra, learned Special Counsel and would submit that the alleged offence is not mere holding of public office or the exercise of an official power. She would submit that prosecution case concerns alleged acquisition, possession, concealment, use, layering and projection of POC. She would submit that such acts are personal acts and cannot become acts in discharge of official duty merely because the person alleged to have committed them occupied a public office at the relevant time. Therefore, she would persuade this Court to dismiss the present Petition.

8. I have heard Mr. Mithilesh Mishra, learned Advocate appearing for Petitioner; Mr. Prashant Mishra, learned Special Counsel for Respondent No.1 – ED and Ms. Gotad, learned APP for Respondent No.2 - State and with their able assistance perused the record placed before me. Submissions made by the learned Advocates have received due consideration of the Court.

9. Petition calls upon the Court to answer a legal issue. Petitioner's case is that since he was in Central Government Service and therefore a public servant, sanction under Section 197(1)(a) of CrPC was not obtained by prosecution before indicting and arraigning

the Petitioner as accused in the present crime. Therefore, Petitioner contends that the FIR *qua* Petitioner be quashed and set aside since the condition precedent contemplated under Section 197(1)(a) of CrPC is admittedly not complied, thereby rendering prosecution of Petitioner unsustainable, rather illegal, *non est* and invalid.

10. It is seen that material placed on record *prima facie* shows that Petitioner is named as accused No.1 in the principal FIR No. RC0262022A0010 dated 30.06.2022 and arrested subsequently by ED on 27.06.2023 under provisions of PMLA, 2002. It is seen that on 09.10.2024 he was granted bail by this Court and released from custody on 10.10.2024. It is seen that Petitioner was placed under suspension by the Central Government vide order dated 17.08.2023 w.e.f. 27.06.2023 and continues to be under suspension until 27.12.2026 as his suspension has been extended by the Central Government from time to time.

11. It is stated in the Affidavit-in-reply of ED in paragraph No.15 that sanction for prosecution was granted by Competent Authority vide Sanction Order No.03/2026 dated 18.03.2026 and the CBI thereafter filed the chargesheet before learned Special Judge on 30.03.2026. At Annexure – 1, neither the alleged sanction order dated 18.03.2026 nor the chargesheet has been annexed, what is annexed is an order dated 22.06.2026 passed by the Central Board of Indirect Taxes and Customs

which regards to acceptance of recommendation of Suspension Review Committee recommending suspension of Petitioner to be continued for a further period of 180 days upto 27.12.2026. In paragraph No.4.2 of the above order, ED has stated that sanction is sought vide letter dated 06.02.2022 which is presently under examination. This letter is appended at Annexure – 2 – page No.140 of the Petition to the Affidavit - in - reply. Once this is the position admittedly, ED has accepted that there is no sanction recevied for prosecution of Petitioner.

12. From the above it is discernible that ED has admitted that cognizance of the present complaint has been taken without obtaining valid sanction from the Competent Authority under the statutory rather mandatory provisions of Section 197(1)(a) of CrPC as applicable to the case of Petitioner. ED however is contesting the present Petition on the footing that sanction under Section 197 of CrPC is not required in the facts of the present case since Petitioner has committed the offence beyond the scope of his official duties. It is seen that Petitioner is held guilty for the offences of money laundering. He is held guilty for amassing assets in his name and in the name of his family members and also for incurring huge expenditure of Rs. 2.45 Crores which is alleged to be disproportionate to their legal sources of income. How the Petitioner has amassed this wealth outside the purview of his official duties is neither explained nor even stated.

13. It is seen that the impugned order taking cognizance has been passed by the learned Special Court without acknowledging and without ascertaining the fact that the prosecution has or has not obtained sanction which is a statutory requirement and condition precedent under the provisions of Section 197(1)(a) of CrPC in the case of the Petitioner who is a public servant before taking cognizance. The statutory provision under Section 197(1)(a) of CrPC requires the accused to be a public servant of Central / State Government and before filing the complaint before Special Court, prior sanction for prosecution from the Competent Authority is required to be obtained.

14. Section 197(1) of CrPC which corresponds to Section 218 of Bharatiya Nagarik Suraksha Sanhita, 2023 reads thus:

> *"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-*
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> *(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.] [Added by Act 43 of 1991, Section 2 (w.e.f. 2-5-1991).]*
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> *[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 354D, section 370, section 375, section 376, [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB,] [Inserted by Criminal Law (Amendment) Act, 2013] or section 509 of the Indian Penal Code.] [Inserted by Act 63 of 1980, Section 3 (w.e.f. 23.9.1980).]"

15. As held by the Supreme Court in case of ***Directorate of Enforcement*** *(1st supra)*, noncompliance of aforesaid statutory provision by itself is sufficient to invalidate the cognizance taken by the learned Special Court. In the present case Respondent No.1 – ED has proceeded to complete its investigation and has filed detailed complaint under Section 44(1)(b) of PMLA, 2002 even though investigation into the predicate offence by the Investigation Agency has not been concluded. The Supreme Court in the case of ***P. K. Pradhan*** *(2nd supra)* has clarified this position about the legislative position of Section 197(1) in paragraph Nos. 5 and 15 thereof which is clear, unequivocal and unambiguous. Paragraph Nos. 5 and 15 of the aforesaid judgment are reproduced below for ready reference:

"5. The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and 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". 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. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination 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 a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation.

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15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

15.1. From the above it is clearly seen that it was necessary for the learned Special Court to ensure that prior sanction was obtained before taking cognizance of the complaint against Petitioner because it is an

admitted position that Petitioner was a Civil Servant / Public Servant during the relevant period and was not removable from his office without the sanction of the Central Government. Thus in such circumstances, Respondent No.1 – ED was mandatorily required to obtain prior sanction before filing the complaint and in the absence of such sanction the learned Special Court ought not to have taken cognizance of the complaint.

16. It is seen that applicability of Section 197(1) is contingent upon fulfillment of two conditions viz., First, that the accused is the public servant who is not removable from his office save by or with sanction of the government and Second, that the alleged offence was committed by him acting or purported to act during discharge of his duty. Charge and allegations against the Petitioner is of amassing wealth while in discharging his duty which is disproportionate to his legal sources of income and similar is the charge against his near relatives. Thus the case of Petitioner clearly requires prior sanction which is the *sine qua non* for institution of and taking cognizance of the complaint.

17. If prior sanction is not obtained in such a case the defect is not curable and goes to the very root of the proceedings which is the foundational jurisdictional issue thereby rendering all subsequent actions involving continuing prosecution legally unsustainable.

18. In view of the above observations and findings, the impugned order dated 31.08.2023 is therefore legally unsustainable and deserves to be interfered with by this Court. This is a clear case of no sanction issued by the Competent Authority and prosecution being launched against the public servant in utter disregard of the provision under Section 197(1) of the CrPC. The Petition therefore stands to be allowed.

19. In view of the above, Writ Petition is allowed in terms of prayer clause 'a' and 'b' which reads thus:

> *"a. That this Hon'ble Court be pleased to call for the records and proceedings in PMLA Spl. Case No. 1282/2023 arising out of ECIR/ MBZ0-1/69/ 2022 for offences punishable u/s. 3 and 4 of the PMLA, 2002 and upon going through the same be pleased to quash and set aside order dt. 31.08.2023 passed below Exhibit 1 therein taking cognisance of the complaint and subsequently issuing process against the Petitioner, in the interest of justice;*
>
> *b. This Hon'ble Court be pleased to quash the Complaint arising out of ECIR/ MBZ0-1/69/ 2022, filed by the Respondent No. 1 for offences punishable u/s. 3 and 4 of the PMLA, 2002, in the interest of justice;"*

20. Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

RAVINDRA MOHAN AMBERKAR
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Date: 2026.11.18 13:13:46 +0530