

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**BEFORE**

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

+ **CRIMINAL MISCELLANEOUS CASE 5536/2014**

**Between:-**

**SHRI B K PARCHURE  
S/O SHRI D.N. PARCHURE,  
R/O WZ-1409, NANGAL RAYA,  
NEW DELHI**

**.....PETITIONER**

*(By Shri Pramod Kumar Dubey, Senior Advocate alongwith Shri Nishi Ranjan, Shri Kaustabh Chauhan, Shri Mr.Anurag Andley, Ms.Prachi Dubey, Shri Devesh Nath Tiwari, Shri Deep Narayan & Shri Prince Kumar, Advocates)*

**AND**

**STATE**

**..... RESPONDENT NO. 1**

**SHRI PRAVEEN KUMAR  
S/O SHRI MOHINDER SINGH SHARMA  
R/O HOUSE NO. 315, DAROGA MARKET  
MAIN CHOWK, VILLAGE BURARI  
DELHI-110084**

**.....RESPONDENT NO. 2**

*(Shri Satinder Singh Bawa, APP for State  
Shri Sarvesh Bisaria, Shri Prakash Chandra, Shri Devvrat Sharma  
& Shri Pravesh Kaushik, Advocates for Respondent No. 2)*

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Pronounced on : 18.08.2022  
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## **J U D G M E N T**

1. This petition under Section 482 of Cr.P.C. seeks quashment of the order dated 28.07.2014 passed by the Court of learned MM-06(C)/Delhi in CC No. 65/1C, whereby, the application filed by the present petitioner for his discharge on the ground of not obtaining sanction under Section 197 of Cr.P.C. has been rejected.

2. The brief facts of the case are that respondent No.2/complainant filed the complaint against the petitioner (the then Tehsildar) and three other government officers under Section 200 of Cr.P.C. for the offence punishable under Sections 218/466/120-B/34 of IPC and Section 13(i)(c) and 13(d)(ii) of the PC Act, 1988. According to respondent No.2/complainant (hereinafter referred as 'complainant'), the present petitioner and other accused persons have prepared an incorrect map intentionally and dishonestly only to cause damage to the property of the complainant with respect to Khasra No. 315. On the basis of the fabricated documents, i.e., an incorrect map, the property of the petitioner was described to be under encroachment. The respondent No. 2/complainant alongwith his complaint also filed an application under Section 156(3) of Cr.P.C. In pursuance to the directions issued by the learned MM on 13.12.2005, Action Taken Report was submitted by the concerned Police Station on 21.12.2005 stating therein that no forgery or change in the original documents was found, therefore, no cognizable offence was made out. On 01.06.2006, the learned MM noted that on the basis of the police record, facts and circumstances of the case, it was not appropriate to direct the registration of the FIR under Section 156(3) of Cr.P.C. However, the Court directed the complainant to prove his

complaint while leading evidence. Respondent No. 2/complainant challenged the said order before the Revisional Court in Criminal Revision No. 13/2006 and the learned Additional Sessions Judge vide order dated 16.10.2006 set aside the said order and directed the trial court to decide the application under Section 156(3) of Cr.P.C. afresh after hearing the complainant. On 01.09.2007, the learned Metropolitan Magistrate after hearing respondent No. 2/complainant passed an order rejecting the application under Section 156(3) of Cr.P.C. The learned Metropolitan Magistrate, however, took cognizance of the offence and fixed the matter for pre-summoning the complainant's evidence. Thereafter, the evidence of seven witnesses produced by the complainant including himself was recorded as pre-charge evidence. On 15.03.2010, the learned ACMM directed for the summoning of the petitioner for the offence punishable under Sections 218/466 of IPC. However, he did not find any material to summon the other accused made in the complaint.

3. The petitioner had approached this Court against the order of summoning in CRL.M.C. 1774/2010. This Court vide order dated 10.07.2012, allowed the petitioner to withdraw his petition with liberty to raise the point of sanction under Section 197 of Cr.P.C. before the learned trial court and to invite its decision on the said issue at the first instance. The petitioner, thereafter, filed an application for his discharge. The learned MM vide impugned order dated 28.07.2014 rejected the application, so submitted by the petitioner on the ground that the sanction under Section 197 of Cr.P.C. is only required when the offence is purported to have been done by the accused while acting or purporting to act in the discharge of his official duties. According to the impugned order, whether the petitioner was acting under the due discharge of

official duties or not is a matter of trial which cannot be decided at the stage of issuing summon, as the same requires leading of evidence from both the sides.

4. Shri Pramod Dubey, learned Senior Counsel assisted by Shri Nishi Ranjan, appearing on behalf of the petitioner submits that the impugned order is illegal and improper and the same is passed in ignorance of the settled legal position. According to him the learned ACMM Court, while earlier rejecting the application under Section 156(3) of Cr.P.C. has twice held that the petitioner and other officials were performing their official duties and even as per the police report no forgery was found to have been committed by any one of them. He, therefore, submits that no offence has been committed by the petitioner, who was working as a *Tehsildar* in the office of Deputy Commissioner (North). He further submits that this Court directed for re-demarcation of certain land under the close supervision of Deputy Commissioner (North), therefore, re-demarcation was being conducted and hence the alleged act of the petitioner strictly falls within the scope and ambit of protection under Section 197 of Cr.P.C. He placed reliance on the decisions of the Hon'ble Supreme Court in the matters of *Rakesh Kumar Mishra v. State of Bihar & Ors.*<sup>1</sup>, *State of M.P. v. Sheetla Sahai & Ors.*<sup>2</sup>, *Prakash Singh Badal & Ors. vs. State of Punjab & Ors.*<sup>3</sup>, *State of Punjab v. Lab Singh*<sup>4</sup>, *Abdul Wahid @ Mintu Ansari v. The State of Bihar*<sup>5</sup>, *Sankaran Moitra v. Sadhna Das & Another*<sup>6</sup>, *K.L. Verma v. State &*

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<sup>1</sup> (2006) 1 SCC 557

<sup>2</sup> (2009) 8 SCC 617

<sup>3</sup> (2007) 1 SCC 1

<sup>4</sup> (2014) 16 SCC 807

<sup>5</sup> (2000) 8 SCC 500

<sup>6</sup> (2006) 4 SCC 584

*Anr.*<sup>7</sup> *Matajog Dobey v. H. C. Bhari*<sup>8</sup>, *State of Orissa v. Ganesh Chandra Jew*<sup>9</sup>, *N.K. Ganguly v. CBI*<sup>10</sup>, *Anuj @ Gunja v. State & Ors.*<sup>11</sup> and *Anil Kumar and Others vs. M.K. Aiyappa and Another*<sup>12</sup>.

5. Shri Sarvesh Bisaria, learned counsel appearing on behalf of respondent No. 2 opposed the prayer made in the instant petition. He submits that this Court is not required to examine any aspects relating to the merit of the case, as the petitioner had earlier chosen to withdraw his CRL.M.C. 1774/2010 and the only liberty granted to him was to contest the issue of non-grant of sanction. Since the learned Court below has found that it is a matter of trial whether the petitioner was acting under the due discharge of official duties or not, this is not a fit case for interference by this Court. He placed reliance on the decisions of the Hon'ble Supreme Court in the cases of *Prakash Singh Badal (supra) & Om Kr. Dhankar vs. State of Haryana & Anr.*<sup>13</sup> He, therefore, submits that the offence of framing an incorrect record or forgery of record of a public register can by no stretch of the imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in the discharge of official duty.

6. I have heard learned counsel for the parties and perused the record.

7. The pivotal issue, i.e., the applicability of Section 197 of the Code needs careful consideration. The Hon'ble Supreme Court in the matter of *Bakhshish Singh Brar v. Smt. Gurmej Kaur & Anr.*<sup>14</sup>, while emphasizing the balance between the protection to the officers and the

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<sup>7</sup> (1998) 9 SCC 44

<sup>8</sup> AIR 1956 SC 44

<sup>9</sup> (2004) 8 SCC 40

<sup>10</sup> (2016) 2 SCC 143

<sup>11</sup> Crl.M.C. No. 5379/2013

<sup>12</sup> (2013) 10 SCC 705

<sup>13</sup> (2012) 11 SCC 252

<sup>14</sup> (1987) 4 SCC 663

protection to the citizens observed that it would depend on the facts and circumstances of each case as to how balance can be made between two aspects, namely, protection of public officers and public servants functioning in the discharge of official duties and protection of private citizens. The protection given under Section 197 of Cr.P.C. is to protect the responsible public servants against the institution of possibly vexatious criminal proceedings for the offences alleged to have been committed by them, while they are acting or purported to act as a public servant. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule.

8. The Hon'ble Supreme Court in another decision in the case of ***Rakesh Kumar Mishra (Supra)*** has held that one safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty: if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant.

9. Section 197 of Cr.P.C. is being reproduced 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 office 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-*

*(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: 1 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.*

(2) xxxxxxxxxxxx

(3) xxxxxxxxxxxx

(3A) xxxxxxxxxxxx

(3B) xxxxxxxxxxxx

(4) xxxxxxxxxxxx

10. In the case of **Rakesh Kumar Mishra (supra)**, respondent No. 2, therein issued spot instructions to arrest the suspects and conduct a search. The search was conducted and no material of any substance was found. Alleging that the search was motivated and was for the purpose of humiliating and harassing respondent No. 2, therein, and his sons, the complainant, in that case, approached the Court of Chief Judicial Magistrate for taking cognizance of the offence punishable under Sections 342/389/469/471/120B IPC. The Magistrate took cognizance. The accused therein filed a petition before the Patna High Court. Having dismissed his petition, the accused filed SLP before the Supreme Court.

The Hon'ble Supreme Court granted leave and, in that case, has held that the order passed by the Magistrate taking cognizance was against the principle of law. It was held that the High Court focused only on the search warrant and totally ignored other relevant aspects. The other circumstances noted therein had a determinative role in the issue. In paras 17 & 19 of the said decision, the Hon'ble Supreme Court has also held that an accused facing prosecution for the offences under the Prevention of Corruption Act, 1947 & Prevention of Corruption Act, 1988 cannot claim any immunity on the ground of want of sanction if he ceased to be a public servant on the date when the court took cognizance of the said offence. However, the same position would not be applicable in the case of prosecution of a retired public servant under Section 197 of Cr.P.C. Para Nos. 17, 18 & 19 of the said decision is being reproduced as under: -

*“17. The correct legal position, therefore, is that an accused facing prosecution for offences under the old Act [Ed.: The “old Act” referred to is the Prevention of Corruption Act, 1947 and the “new Act” referred to is the Prevention of Corruption Act, 1988.] or new Act [Ed.: The “old Act” referred to is the Prevention of Corruption Act, 1947 and the “new Act” referred to is the Prevention of Corruption Act, 1988.] cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. But the position is different in cases where Section 197 of the Code has application.*

*18. Section 197(1) provides that when any person who is or was a public servant not removable from his office 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 (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, and (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, or the State Government.*

*19. We may mention that the Law Commission in its 41st Report in para 15.123 while dealing with Section 197, as it then stood, observed:*

*“It appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant.”*

*It was in pursuance of this observation that the expression “was” came to be employed after the expression “is” to make the (sic need for) sanction applicable even in cases where a retired public servant is sought to be prosecuted”.*

11. The same principles have been laid down in another decision in the matter of *Sheetla Sahai & Ors. (supra)*. Para 55 of the said decision is being reproduced as under: -

*“55. This leaves us with the question as to whether an order of sanction was required to be obtained. There exists a distinction between a sanction for prosecution under Section 19 of the Act and Section 197 of the Code of Criminal Procedure. Whereas in terms of Section 19, it would not be necessary to obtain sanction in respect of those who had ceased to be a public servant, Section 197 of the Code of Criminal Procedure requires sanction both for those who were or are public servants”.*

12. In the said decision of *Sheetla Sahai & Ors. (supra)*, the Hon'ble Supreme Court in paragraph No. 59 while considering the earlier decision on the issue in the case of *Sankaran Moitra (supra) & Matajog Dobby (supra)* has held that for the purpose of attracting the provision of Section 197 of Cr.P.C., it is not necessary that they must act in their official capacity but even where a public servant purports to act in their official capacity, the same would attract the provisions of Section 197 of the Code.

13. The Hon'ble Supreme Court in the case of *Prakash Singh Badal (supra)* in para 38 has held that the question relating to the need for sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and, on the allegations, contained therein. This question may arise at any stage of the proceedings. The question whether sanction is necessary or not may have to be determined from stage to stage.

14. The Hon'ble Supreme Court in the case of *Gauri Shankar Prasad v. State of Bihar and Anr*<sup>15</sup> while considering the case of removal of encroachment found that the concerned SDM was present at the place of occurrence for the purpose of removal of encroachment from the Government land in exercise of his power. He was alleged to have committed the act which forms the gravamen of the allegations contained in the complaint lodged against him. In those circumstances, the Hon'ble Supreme Court has held that the act of the appellant had a reasonable nexus with the official duty, and therefore, he was held to be entitled to

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<sup>15</sup> (2000) 5 SCC 15

immunity from criminal prosecution without sanction. Para No. 14 of the aforesaid decision is being reproduced as under: -

*“14. Coming to the facts of the case in hand, it is manifest that the appellant was present at the place of occurrence in his official capacity as Sub-Divisional Magistrate for the purpose of removal of encroachment from government land and in exercise of such duty, he is alleged to have committed the acts which form the gravamen of the allegations contained in the complaint lodged by the respondent. In such circumstances, it cannot but be held that the acts complained of by the respondent against the appellant have a reasonable nexus with the official duty of the appellant. It follows, therefore, that the appellant is entitled to the immunity from criminal proceedings without sanction provided under Section 197 CrPC. Therefore, the High Court erred in holding that Section 197 CrPC is not applicable in the case”.*

15. In another decision in the case of ***Abdul Wahid @ Mintu Ansari v. The State of Bihar***<sup>16</sup>, which was related to a firing done by a police inspector while removing encroachment due to which one person died. A private complaint was filed under Section 302/307 IPC etc. The Magistrate issued a summons to the police inspector. A challenge was made to the cognizance taken by the Magistrate by filing a petition under Section 482 of Cr.P.C. before the High Court. The High Court held that the question of sanction can be raised at the time of framing of charge. The Supreme Court held that the issue with respect to sanction has to be considered at the earliest stage of the proceedings. Ultimately, on facts, it was held that the police inspector was entitled to protection and without sanction, he could not be prosecuted. The criminal proceedings instituted without sanction were quashed.

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<sup>16</sup> (2000) 8 SCC 500

16. In the matter of *State of Orissa (supra)* the Hon'ble Supreme Court has held that protection under Section 197 of Cr.P.C. is available only when the 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. The test to determine a reasonable connection between the act complained of and the official duty is that even in case the public servant has exceeded his duty if there exists a reasonable connection it will not deprive him of the protection.

17. The Hon'ble Supreme Court in the matter of *Devinder Singh & Ors. v. State of Punjab and Ors.*<sup>17</sup> had an occasion to consider a case relating to Sections 4 & 5 of Punjab Disturbed Areas Act, 1983 without prior sanction of the Central Government. The case was with respect to an allegation of a fake encounter. The High Court, in that case, had held that as per the prosecution case, it was a case of fake encounter as such sanction was not required. The act could not be said to be an act in the discharge of official duty. The appellant therein was before the Hon'ble Supreme Court. The Hon'ble Supreme Court while placing reliance on various earlier decisions has summarized the principles emerging therefrom in paragraph No. 39. The same is reproduced as under: -

*“39. The principles emerging from the aforesaid decisions are summarised 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.*

*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*

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<sup>17</sup> (2016) 12 SCC 87

*in criminal activities. To that extent Section 197 CrPC 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 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it 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 CrPC, 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 CrPC 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 the appellate court. It may arise at inception itself. There is no requirement that the 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 the*

*accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.*

*39.9. In some cases 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”.*

18. While summarizing the principle of law, the Hon'ble Supreme Court in para 40 has found that the question was in the course of discharge of official duty and therefore, the trial court was directed to redecide the question afresh.

19. The Hon'ble Supreme Court in the matter of ***Station House Officer, CBI/ACB/Bangalore vs. B.A. Srinivasan & Anr.***<sup>18</sup> was considering a case of discharge of the respondent therein for the offence punishable under Sections 419/420/467/468/471 read with Section 120 B of IPC and Section 13(1)(d)/13(1)(2) of the PC Act, 1988. While taking into consideration the fact in that case which were related to fake and fabricated documents, in furtherance of the criminal conspiracy to extend loans to private individuals in gross violations of the rules and regulations, it was found that the officials of the Bank cannot seek the protection of sanction and the court restored the order of the trial court, whereby the challenge on the point of sanction was rejected. It has been held that it is not the official duty of a public servant to fabricate false records and misappropriate public funds.

20. It is thus seen that in cases where, at an initial stage, the Court may not find it necessary to require sanction, but if at a later stage finds that the act of the public servant was in discharge of his official duty,

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<sup>18</sup> (2020) 2 SCC 153

appropriate directions for obtaining sanction can be given. However, if the Court at the initial stage itself is satisfied that an act alleged against an accused is in the discharge of his official function, the requirement of sanction would get attracted immediately. There has to be a reasonable connection between the act complained of and the discharge of official duty. 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. The claim of the accused should not be pretended or fanciful. If the act has a reasonable relation to the duty of the accused, the question of sanction may arise immediately. The use of the expression, 'official duty' implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in the discharge of his duty. The Section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. The protection given under Section 197 of Cr.P.C. is to protect responsible public servants against the 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. No straight jacket formula can be devised with respect to the stage of applicability of sanction. However, the same would depend on the facts of each case.

21. The decisions as referred above are the authority for what they actually decide. Reference to a particular sentence in the context of the factual scenario cannot be read out of context.

22. On the basis of the aforesaid legal position if the facts of the present case are analyzed, the same would reveal that an instant complaint under Section 200 of Cr.P.C. was filed by respondent No. 2 against four other Government Servants *Mrs. Achala Singh* (D.C. North), (Petitioner), *Shri B.K. Parchure*, the then Tehsildar Office of D.C. (North), *Shri Ramesh Kumar Kannongo*, office of D.C. (North) & *Shri Lok Nath Girdhar, Patwari*, office of D.C. (North).

23. The averments in the plaint are that the respondent No. 2/complainant is the owner of property including *Khasra No. 315-A*, which had 99 feet wide road. There was some dispute with regard to the width of the road in the year 2002. On 25.11.2002, in pursuance of directions of the competent authority, the Revenue Department did the demarcation. No encroachment was found at the instance of respondent No. 2 on the public road. Some of the aggrieved persons of the locality who were found to be under illegal encroachment challenged the demarcation before this Court. This Court directed for re-demarcation under the close supervision of the Deputy Commissioner (North). In pursuance of the directions given by this Court, fresh demarcation took place between 09.06.2005 to 11.06.2005.

24. A map was drawn on 11.06.2005 and the proceedings were signed by the learned ADM and his subordinate staff. Some of the portions of the petitioner were found to be under encroachment and the same was demolished in accordance with, the map dated 11.06.2005. In para 11 of the complaint, it is alleged that on 21.06.2005 without any rhyme and reason the Revenue Department reached the spot at the behest of some interested people of/in the area. Stones were pelted when authorities went to the spot and a case was registered against respondent

No.2/complainant and his family members. They were arrested in the said case. In para 12, it is stated that the accused persons prepared an incorrect map on 23.06.2005 with endorsement encroachment to be removed in Khasra No. 315. The said alleged fabricated map is stated to have been received by the JE of MCD on 24.06.2005. According to respondent No. 2, there was no occasion to prepare the site plan on 23.06.2005. In para 13, it is stated that DC Revenue *Mrs. Achala Singh* got prepared the map, which was fabricated and signed by the present petitioner. The original map is stated to have been signed by the present petitioner, by his signatures on 17.02.2004.

25. Without considering any explanation or defence of the petitioner it can be seen from the reading of the complaint itself that (i) on 21.06.2005 the Revenue Department reached at the spot; (ii) the complainant and his family members were arrested in a criminal case; (iii) all accused persons are alleged to have been prepared an incorrect map; (iv) DC Revenue *Mrs. Achla Singh* got prepared the map; (v) there were directions given by this Court to re-demarcate the road.

26. Paras 11 to 13 of the complaint are being reproduced as under: -

*“11. That on 21.06,2005, without any rhyme and reasons, the revenue department reached at the spot apparently at the behest of some those interested persons of the area, whose; properties were to be demolished as the same had come in the area of the road. On dated 21.06.2005 also the revenue department staff after seeing demolished part of khasra No. 315 was fully satisfied that the part of the building had been demolished in accordance with demarcation and the revenue department staff starting back, but those interested persons intentionally started pelting stones on the property' of the complainant only to create nuisance with the complainant and other family members, who were present inside the building at that time. Some mischievous persons also started pelting stones towards those persons who*

*gathered there as spectators. Surprisingly, a case was registered in which the present complainant and his family members, who were aggrieved were made accused alongwith those persons who pelted the stones and caused injuries to the complainant and his family members. The complainant and his family members were arrested in that criminal case arbitrarily.*

*12. That the accused persons prepared an incorrect map intentionally and dishonestly only to cause damage to the property of complainant on 23/06/2005 with "endorsement" encroachment to be removed in Khasra No. 315 and this fabricated document i.e. incorrect map was received by J.E. of MCD on 24.06.2005. After 11.06.2005 no Revenue office ever visited the spot of re-demarcation and no authority ever ordered for re-demarcation. So there was no occasion to prepare the site plan dt. 23.06.2005 particularly in view of the fact that the map was prepared on 11.06.2005 alongwith the proceedings written and signed by the revenue official from the rank of Patwari to ADM. It is also pertinent to mention that accused persons have also tempered with the map date 11.06.2005 which is clear from its comparison with proceedings written on 11.06.2005 and also with the comparison of the map supplied to present applicant.*

*13. That the incorrect document has only been fabricated to save their skin as on 21.06.2005 an incident took place which resulted in the registration of F.I.R. and injuries to the person of complainant and his family members. Otherwise after 11.06.2005 no revenue officer reached at the spot for the demarcation or re-demarcation so on 23.06.2005 haphazardly the D.C. revenue Smt. Achla Singh got prepared the map which was fabricated which is also clear from the fact that a map was drawn by the same Tahsildar under his signature on 17.02.2004 and a NALA was excavated on 03.12.2004 in accordance with measurement and demarcation Site plan prepared by the Revenue Officers. That the complainant made a written complaint to S.H.O Civil Line to take legal action under appropriate section of law but till date no action has been taken by local police. Hence this present complaint for issuance of directions for the registration of case against accused persons*

*in view of the law 'settled by Hon'ble Supreme Court in Madhu Bala and Suresh Chand Jain cases'.*

27. It is thus seen that the act of the petitioner clearly falls within the scope of Section 197 of Cr.P.C., so as to attract the requirement of obtaining sanction immediately at the time of taking cognizance. If Section 197 of Cr.P.C. is construed too narrowly it can never be applied, to any of the acts committed by a public servant as no public servant can be allowed to commit an offence in the discharge of his official duty. The entire legislative intent would be frustrated.

28. In the instant case firstly, there are no allegations specifically against the present petitioner so as to isolate him from the other officials discharging their official duty. Extract of the police report dated 21.12.2005 is being reproduced as under: -

*“Further assistance to MCD was to be given at site to establish these points based on the above maps so that alignment on ground would be exactly marked. Meanwhile the complainant obtained the stay order from Hon'ble High Court of Delhi. The demarcation report was given by revenue Deptt. The point of encroachment was established and since it was a built up area further point of alignment could be marked only after demolition upto the point marked on demarcation report was carried out. That is why the alignment was marked with pencil during the discussion. It is pertinent to mention that in all the demarcation report there is no change in established point.*

*In view of above facts and circumstances, no forgery or change in the original document, have been found. Therefore no cognizable offence is made out. Hence the complaint has been filed.”*

29. The alignment was marked with a pencil during the discussion and no forgery or change in the original document was found, and therefore,

the complaint made by respondent No. 2 was declined. On 01.06.2006, the learned MM did not find any reason to direct for registration of FIR under Section 156(3) of Cr.P.C. Even after the directions dated 16.10.2006 by the revisional court to re-decide the application under Section 156(3) of Cr.P.C. the learned MM on 01.09.2007 found in para 10 that all the accused persons had been performing their duties at the relevant time and they had been working at responsible positions. However, on 15.03.2010, the learned MM summoned the petitioner for the offence punishable under Sections 218 & 466 while discharging the other accused against whom no material was found. When the petitioner filed an application under Section 197 of Cr.P.C. for discharge as per the liberty given by this Court in the earlier round of litigation, the same has been dismissed by the impugned order only on the ground that whether the petitioner was acting under the due discharge of official duties or not is a matter of trial which can only be decided after leading the evidence from both the sides. The impugned order dated 28.07.2014 reads as under: -

*“Matter is fixed for orders on application for discharge of the accused no.2.*

*It is submitted by the Ld. Counsel for the accused no.2 that on 15.03.2014, an order on summoning was made and accused no.2 was summoned. However, there were no sanction u/s 197 Cr.P.C. and therefore, as there was no sanction u/s 197 Cr.P.C., therefore, the accused no.2 is liable to be discharged in the present case.*

*On the other hand, it is submitted by the Ld. Counsel for the complainant that the order of summoning has been made and the question regarding the discharge of accused can be raised at the stage of argument on charge and there is no requirements for the present application.*

*I have heard the arguments and perused the record carefully.*

*The sanction u/s 197 Cr.P.C. is only required when the offence is purported to have been done by the accused in due discharge of his official duties. Whether the accused no.2 was acting under the due discharge of official duties or not is a matter of trial which can not be decided at this stage as it requires leading evidence from both the sides. Therefore, present application is dismissed and put up now for pre-charge complainant evidence on 10.11.2014.”*

30. As stated above there is no doubt that a question of sanction can arise at any stage of proceedings but the same gets attracted immediately at the time of taking cognizance, if the facts of the case or act of the accused, are so intricately connected to his official function that it cannot be segregated. There is no legal bar to always postpone the requirement of sanction at a later stage.

31. The Hon'ble Supreme Court in the matter of *Indira Devi v. State of Rajasthan and Anr.*<sup>19</sup>, while considering its earlier pronouncements in the cases of *Subramanian Swamy v. Manmohan Singh*<sup>20</sup>, & *State of Maharashtra v. Budhikota Subbarao*<sup>21</sup>, has held that the real question is whether the act committed is directly concerned with the official duty. In para 11 of the said judgment, while considering the fact of that case, it has been considered that the role assigned to the accused in that case was alleged infraction i.e., conspiring with his superiors. The superior officers were granted protection while the accused therein who was a clerk, who processed the paper was denied similar protection and, therefore, it was

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<sup>19</sup> (2021) 8 SCC 768

<sup>20</sup> (2012) 3 SCC 64

<sup>21</sup> (1993) 3 SCC 339

held that the sanction from the competent authority would be required to take cognizance.

32. So far as the judgment relied upon by learned counsel appearing on behalf of respondent No. 2 in the case of *Om Kr. Dhankar (supra)* is concerned, the same relates to a case where JMFC summoned the accused to face trial under Sections 420/406/161 IPC. The accused therein had approached the Court of learned Additional Sessions Judge, who set aside the order of summoning. The complainant remained unsuccessful before the High Court and hence the Hon'ble Supreme Court had an occasion to consider the case on his behalf. In the said case, the complainant was the transporter and operating buses on a contract basis. It was alleged that the accused was working as Deputy Excise & Taxation Commissioner, Gurgaon. The accused therein required the complainant to visit his residence and pay a certain amount for the release of the vehicle of the complainant. The allegations were that the accused therein cheated the complainant and the public money was embezzled. An allegation of illegal gratification was made. It was stated that the accused therein issued directions with *malafide* intent to the Inspector posted at different tax collection not to accept passengers' tax at the collection point, and therefore, the complaint in question was filed. In view of the principles laid down in the case of *Prakash Singh Badal (supra)* & *Rakesh Kumar Mishra (supra)*, the Hon'ble Supreme Court found that the offence of cheating under Section 420 or for that matter offence related to Sections 467/468/471/120B IPC can by no stretch of the imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in the discharge of official duty.

33. In the instant case, the facts and the offence alleged against the petitioner is altogether different.

34. In view of the aforesaid, this Court finds that the order passed by the learned MM dated 28.07.2014 suffers from non-application of mind. The same is, therefore, set aside.

35. The complaint of respondent No. 2 is rejected for want of sanction with liberty to proceed afresh after obtaining sanction from the competent authority. The petition stands allowed to the extent indicated above.

**(PURUSHAINDRA KUMAR KAURAV)**  
**JUDGE**

**AUGUST 18, 2022**

*p'ma*

सत्यमेव जयते