IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01ST DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.2164 OF 2023

BETWEEN:

MR. ALOK KUMAR

... PETITIONER

(BY SRI SANDESH J.CHOUTA, SR.ADVOCATE A/W
SRI SUNIL KUMAR S., ADVOCATE)

AND:

MR.MALLIKARJUN B.M. @ RAVI

... RESPONDENT

(BY SRI SANCHAN JAI NANDAN, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO i. SET ASIDE THE ORDER DATED 13.12.2022, PASSED BY THE XXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE (PCA), BENGALURU IN CR.NO.36/2015 OF THE KARNATAKA LOKAYUKTHA POLICE, THEREBY REJECTING THE B FINAL REPORT FILED BY THE KARNATAKA LOKAYUKTA POLICE AND TAKING CONGNIZANCE FOR THE OFFENCE P/U/S 7, 13(1)(d) R/W 13(2) OF PREVENTION OF CORRUPTION ACT, AS AGAINST THE PETITIONER WHO IS ARRAYED AS ACCUSED NO.2 VIDE ANNEXURE-A AND ETC.,

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29.05.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question proceedings before the XXIII Additional City Civil and Special Judge for (Prevention of Corruption Act), Bengaluru in Crime No.36 of 2015 registered for offences punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act' for short).

2. Facts, in brief, germane are as follows:-

The petitioner is an officer of the Indian Police Service. A complaint comes to be registered by the respondent on 30-05-2015 against one Sri Chandru @ Chandrashekhar for offences punishable under Sections 7, 13(1) (d) r/w Section 13(2) of the PC Act. The allegation was that on 30-08-2014 the respondent/complainant and his friends had been to Orange Bar & Restaurant and there was an altercation between them and the management of the bar, in respect of the said incident a case comes to be registered against the complainant before the Vyalikaval Police Station. It is the allegation that during the investigation in the said crime, the Assistant Commissioner of Police and other police officers repeatedly called the complainant and demanded a bribe to close the case, in pursuance of which, it is the averment in the complaint that the complainant gave ₹5/- lakhs to the Assistant Commissioner of Police and the Assistant Commissioner of Police is said to have called the complainant and allegedly demanded ₹1/- crore as bribe. The reason springs here that the demand of ₹1/- crore was to be given to the petitioner.

3. It is further alleged that when the complainant did not pay the amount as demanded, he was threatened that they will invoke offences under the Arms Act and also serious offences under the Indian Penal Code against him. It is then one Mr. Putte Gowda, a Police Sub-Inspector and a distant relative of the complainant working under the petitioner was summoned and was pressurized for fulfilling the amount of bribe from the complainant, as demanded by the petitioner. It is the averment in the complaint that Mr. Putte Gowda refused to do so. Therefore, he was placed under suspension. Based upon the aforesaid incident, crime in Crime No.36 of 2015 had come to be registered. Upon investigation in the said crime, the Police wing of the Karnataka Lokayukta file 'B' report against the accused including the petitioner contending that there was no substance in the allegation of demand and acceptance of bribe.

4. On the police filing the 'B' report, notice was issued to the complainant. The complainant files his protest memo to the 'B' report and to the memo filed by the Lokayukta to close the case against the petitioner. The concerned Court rejects the 'B' report

and takes cognizance of the offence punishable under Sections 7, 13(1)(d) r/w 13(2) of the PC Act against the petitioner. It is against the order taking cognizance dated 13-12-2022 in Crime No.36 of 2015 the petitioner is before this Court in the present petition.

5. Heard Sri Sandesh J.Chouta, learned senior counsel appearing for the petitioner and Sri Sanchan Jai Nandan, learned counsel appearing for the respondent.

6. The learned senior counsel would submit that rejection of 'B' report by the learned Sessions Judge and taking of cognizance based upon a complaint so registered by the complainant are all an abuse of the process of law. The complaint so narrated did not even have any ingredients of demand and acceptance. There is no evidence placed even *prima facie* to demonstrate that the petitioner had demanded and accepted any bribe. An imaginary complaint springs as the petitioner had been strict in curbing of rowdy activities in the City and the complainant was a rowdy sheeter. It is his submission that the complaint of the complainant that the

petitioner had demanded bribe is without there being any substance. He would seek to place plethora of judgments of the Apex Court to buttress his submission, which would all be considered in the course of the order.

7. On the other hand, the learned counsel representing the respondent/complainant would submit that 'B' report is rejected and cognizance is taken. While doing so, the concerned Court has passed a detailed order as to why the 'B' report had to be rejected. The petitioner would have adequate opportunity in the trial to prove his case. Since the petition is filed on rejection of the 'B' report, the petition should be dismissed. He would submit that the complainant was falsely branded as a rowdy sheeter and he has been fighting the cause for a long time now. Therefore, merely because he is alleged to be a rowdy sheeter, the case cannot be killed is what the learned counsel for the respondent/complainant would submit.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts are not in dispute. The crime comes to be registered in Crime No.36 of 2015. The crime is registered by the Karnataka Lokayukta Police based upon a complaint made by the respondent/complainant. The complaint is registered on 30-05-2015. Since the entire issue has sprung from the complaint, I deem it appropriate to notice the same. It reads as follows:-

> *"I, Mallikarjun.B.M.(Ravi), am residing at the above mentioned address. My distant cousin brother is Puttegowda PSI, (2010 Batch) and he was posted at Vyalikaval Police Station till about March 2015.*
>
> *On 30th August, 2014, myself and my friends had gone to Orange Bar & Restaurant and had a scuffle (Fight) with the management of the Bar, the same has been recorded in the CCTV.*
>
> *Counter FIR was registered by both the parties, the Inspector, ACP and other police Officers repeatedly called me and suggested that they would settle the matter for money and I have recorded one such conversation, then I loaned money from one of my friend and paid Rs.5,00,000/- to the Inspector and the ACP. After a day ACP informed me that Alok Kumar wants Rupees One Crore and this money is not sufficient and if I fail to pay Rs.1 Crore within 48 hours, Mr. Alok Kumar will use his media contacts and blow this incident out of proportion.*

The ACP said he has already given Rs.5,00,000/- to Alok Kumar, he wants more, ACP also said he is willing to return my money from his pocket. He also told me that on the basis of the instructions of Alok Kumar I might be implicated in Arms Act and other serious section of IPC. Even though no gunshot was fired, Alok Kumar is forcing to issue notice to seize my licensed weapon.

I told him that I don't have one crore rupees to pay to Alok Kumar, what shall I do, he advised me to arrange the money or apply for anticipatory bail. Thereafter 3-4 days suddenly the matter was over highlighted in Bangalore Mirror and suddenly DCP started saying that he will open a Rowdy list against me. Clearly it seems that he is misusing his media contact to malign my image and reputation.

Thereafter Alok Kumar some how discovered that Puttegowda is my distant cousin brother. He called him to his office and asked him to put pressure on me to pay one Crore Rupees. Puttegowda refused to oblige Alok Kumar. Thereafter Puttegowda was suspended at the written order of DCP Ram Nivas Sepath. When asked Sepath "Why I am being suspended", then DCP said "Talk to Jupiter (Alok Kumar)".

He met Alok Kumar who said "You know why I suspended you, next time I ask bring money from Ravi don't refuse, now stay suspended minimum 45 days. That's the reason of his suspension, were frivolous. One such reason mentioned was he was not available on one ACP raids. The fact is that he was attending training in Commissioner of Police Office, which was with full knowledge of his seniors. Copy/ies of relevant documents are enclosed herewith. This clearly indicates that I was that I was the actual target and since my brother did not oblige, he was suspended.

Earlier also Alok Kumar misused his office and instructed Thyagarajnagar Police Station to intimidate me and others for a false case of Capital PMLA (which police station does not even has Jurisdiction) and forced us to sign Agreements with one Ramakrishna. C. H., allowing him to enjoy our money and not to pay us the same causing us wrongful loss.

I therefore humbly request you to please register my complaint and take necessary action in the interest of justice."

After registration of the complaint, the Police conduct investigation. The investigation leads to filing of 'B' report. The 'B' report was placed before the concerned Court for closure of the case. On the 'B' report a notice was issued to the complainant. The complainant then files a protest memo before the concerned Court. The concerned Court in terms of its order dated 13-12-2022 takes cognizance by rejecting the 'B' report. The operative portion of the order reads as follows:

"***ORDER***

"The B final report filed by the Police Inspector, Bengaluru City Division, Karnataka Lokayukta is rejected.

Acting under Section 190(1)(a) of the Cr.P.C., cognizance of the offence is taken against the accused No. 1 to 4 Mr. Chandru @ Chandrashekhar, Mr. Alok Kumar, Mr. Daneshwar Rao and Mr. Shankarachari for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

For appearance of the complainant and recording the sworn statement by 31-01-2023.

(LAKSHMINARAYANA BHAT K.)
XXIII Addl.City Civil & Sessions Judge
& Special Judge (PCA), Bengaluru."

Separate detailed order is passed rejecting the 'B' report and taking cognizance. It is not in dispute that the petitioner is an officer of the Indian Police Service – a public servant. The cognizance taken against the petitioner and others is for offences punishable under Sections 7, 13(1)(d) r/w 13(2) of the PC Act. A perusal of the complaint would indicate that the allegations pertain to the discharge of official duty of the petitioner and others. Therefore, sanction for prosecution as obtaining under Section 19 of the PC Act was mandatory to be placed before the concerned Court, prior to the Court taking cognizance of the offence. Section 19 of the PC Act reads as follows:

> *"**19. Previous sanction necessary for prosecution**.— (1) No court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15] alleged to have been committed by a public servant, 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 and is not removable from his office save by or with the sanction of the Central Government, of that 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 and is not removable from his office save by or with the sanction of the State Government, of that Government;*

(c) in the case of any other person, of the authority competent to remove him from his office.

Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under Section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.—For the purposes of sub-section (1), the expression "public servant" includes such person—

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

> *(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."*

The issue as to whether sanction should be taken or not for an offence involving Section 19 of the PC Act where the offences alleged are against public servants and the offences relate to the discharge of official duty is no longer *res integra* as the Apex Court in plethora of cases has considered, elucidated and rendered several judgments. Therefore, the issue need not detain this court for long or delve deep into the matter.

10. The Apex Court interpreting Section 197 of the Cr.P.C., right from the year 1995 has delineated the principle of requirement of sanction to prosecute Government servants. The Apex Court in the case of ***AMRIK SINGH v. STATE OF PEPSU***[1] has held as follows:

> ***"7. The result of the authorities may thus be summed up: 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***

[1] ***(1955)1 SCR 1302***

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.

8. *It is conceded for the respondent that on the principle above enunciated, sanction would be required for prosecuting the appellant under Section 465, as the charge was in respect of his duty of obtaining signatures or thumb impressions of the employees before wages were paid to them. But he contends that misappropriation of funds could, under no circumstances, be said to be within the scope of the duties of a public servant, that he could not, when charged with it, claim justification for it by virtue of his office, that therefore no sanction under Section 197(1) was necessary, and that the question was concluded by the decisions in Hori Ram Singh v. Emperor [AIR 1939 FC 43 : 1939 FCR 159] and Albert West Meads v. King [AIR 1948 PC 156 : 75 IA 185] , in both of which the charges were of criminal misappropriation. We are of opinion that this is too broad a statement of the legal position, and that the two decisions cited lend no support to it. In our judgment, even when the charge is one of misappropriation by a public servant, whether sanction is required under Section 197(1) will depend upon the facts of each case. 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."*

(Emphasis supplied)

Later, the Apex Court in the case of ***PUKHRAJ v. STATE OF RAJASTHAN***[2] has held as follows:

> ***"2. The law regarding the circumstances under which sanction under Section 197 of the Code of Criminal Procedure is necessary is by now well settled as a result of the decisions from Hori Ram Singh's case [AIR 1939 FC 43: 1939 FCR 159: 40 Cri LJ 468] to the latest decision of this Court in Bhagwan Prasad Srivastava v. N.P. Misra [(1970) 2 SCC 56: (1971) 1 SCR 317]. While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. 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 need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty.*** *It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the*

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[2] ***(1973) 2 SCC 701***

act is performed", "cloak of office" and "professed exercise of the office" may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty. In Hori Ram Singh case Sulaiman, J. observed:

> *"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."*

In the same case Varadachariar, J. observed: "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 ofthe Privy Council observed in Gill [AIR 1948 PC 128 : 1948 LR 75 IA 41 : 49 Cri LJ 503] case:

> *"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 in virtue of his office."*

In Matajog Dobey v. H.C. Bhari [AIR 1955 SC 44: (1955) 2 SCR 925: 1956 Cri LJ 140] the Court was of the view that the test laid down that it must be established that the act complained of was an official act unduly narrowed down the scope of the protection afforded by Section 197. After referring to the earlier cases the Court summed up the results as follows:

> *"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."*

Applying this test it is difficult to say that the acts complained of i.e. of kicking the complainant and of abusing him, could be said to have been done in the course of performance of the 2nd respondent's duty. At this stage all that we are concerned with is whether on the facts alleged in the complaint it could be said that what the 2nd respondent is alleged to have done could be said to be in purported exercise of his duty. Very clearly it is not. We must make it clear, however, that we express no opinion as to the truth or falsity of the allegations."

(Emphasis supplied)

Elaborating the said consideration, the Apex Court in the case of ***SANKARAN MOITRA v. SADHNA DAS***[3] has raised the following issue:

*"**6.** The High Court by order dated 11-7-2003 dismissed the application. It overruled the contention of the accused based on Section 197 of the Code of Criminal Procedure thus:*

> *"In its considered view Section 197 Cr.P.C., has got no manner of application in the present case. Under Section 197 Cr.P.C., sanction is required only if the public servant was, at the time of commission of offence, 'employed in connection with the affairs of the Union or of a State' and he was 'not removable from his office save by or with the sanction of the Government'. The bar under Section 197 Cr.P.C., cannot be raised by a public servant if he is removable by some authority without the sanction of the Government.*

Committing an offence can never be a part of an official duty. Where there is no necessary connection between the act and the performance of the duties of a public servant, Section 197 Cr.P.C., will not be attracted. Beating a person to death by a police officer cannot be

[3] ***(2006) 4 SCC 584***

regarded as having been committed by a public servant within the scope of his official duties."

Finding on the said issue by the Apex Court is as follows:

*"**25.** The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty.* ***If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system.*** *So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of learned counsel for the complainant that this is an eminently fit case for grant of such sanction.*

26. We thus allow this appeal and setting aside the order of the High Court quash the complaint only on the ground of want of sanction under Section 197(1) of the

> ***Code of Criminal Procedure. The observations herein, however, shall not prejudice the rights of the complainant in any prosecution after the requirements of Section 197(1) of the Code of Criminal Procedure are complied with."***
>
> *(Emphasis supplied)*

The Power of High Court which was questioned before the Apex Court was set aside on the sole ground that there was no sanction under Section 197 of the Cr.P.C. to prosecute the petitioners. Again, the Apex Court in the case of ***DEVINDER SINGH v. STATE OF PUNJAB***[4]***,*** has held as follows:

> *"**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 in criminal activities. To that extent Section 197 Cr.P.C., 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 Cr.P.C.,. There cannot be a universal rule to***

[4]***(2016) 12 SCC 87***

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 Cr.P.C.,, 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 Cr.P.C., 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."*

(Emphasis supplied)

Following these judgments, the Apex Court in the case of ***D.DEVARAJA v. OWAIS SABEER HUSSAIN***[5] has held as follows:

*"**30.** The object of sanction for prosecution, whether under Section 197 of the Code of Criminal Procedure, or under Section 170 of the Karnataka Police Act, is to protect a public servant/police officer discharging official duties and functions from harassment by initiation of frivolous retaliatory criminal proceedings. As held by a Constitution Bench of this Court in **Matajog Dobey v. H.C. Bhari [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140] : (AIR p. 48, para 15)***

"15. … Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. …

There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction."

31.** In **Pukhraj v. State of Rajasthan [Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944] this Court held: (SCC p. 703, para 2)

[5] ***(2020)7 SCC 695***

> *"2. … While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. 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 need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "cloak of office" and "professed exercise of the office" may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty."*

32. *In* ***Amrik Singh v. State of PEPSU [Amrik Singh v. State of PEPSU, AIR 1955 SC 309 :*** *1955 Cri LJ 865] this Court referred to the judgments of the Federal Court in Hori Ram Singh v. Crown [Hori Ram Singh v. Crown, 1939 SCC OnLine FC 2: AIR 1939 FC 43]; H.H.B. Gill v. King Emperor [H.H.B. Gill v. King Emperor, 1946 SCC OnLine FC 10:*

AIR 1947 FC 9] and the judgment of the Privy Council in Gill v. R. [Gill v. R., 1948 SCC OnLine PC 10: (1947-48) 75 IA 41: AIR 1948 PC 128] and held: (Amrik Singh case [Amrik Singh v. State of PEPSU, AIR 1955 SC 309: 1955 Cri LJ 865] , AIR p. 312, para 8)

> *"8. The result of the authorities may thus be summed up : 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."*

33. *Section 197 of the Code of Criminal Procedure, 1898, hereinafter referred to as the old Criminal Procedure Code, which fell for consideration in Matajog Dobey [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44: 1956 Cri LJ 140], Pukhraj [Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944] and Amrik Singh [Amrik Singh v. State of PEPSU, AIR 1955 SC 309: 1955 Cri LJ 865] is in pari materia with Section 197 of the Code of Criminal Procedure, 1973. The Code of Criminal Procedure, 1973 has repealed and replaced the old Code of Criminal Procedure.*

34. *In Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104] this Court held : (SCC pp. 46-47, para 7)*

> *"7. The protection given under Section 197 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. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for*

anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection 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. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. 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. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty."

(emphasis supplied)

35. *In State of Orissa v. Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104] this Court interpreted the use of the expression "official duty" to imply that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. Section 197 of the Code of Criminal Procedure does not extend its protective cover to every act or omission done by a public servant while in service. The scope of operation of the section is restricted to*

only those acts or omissions which are done by a public servant in discharge of official duty.

36. *In Shreekantiah Ramayya Munipalli v. State of Bombay [Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287 : 1955 Cri LJ 857] this Court explained the scope and object of Section 197 of the old Criminal Procedure Code, which as stated hereinabove, is in pari materia with Section 197 of the Code of Criminal Procedure. This Court held: (AIR pp. 292-93, paras 18-19)*

> *"18. 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. What it says is—*
>
> *'When any public servant … 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….'*

We have therefore first to concentrate on the word "offence".

> *19. Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the present case, the elements alleged against Accused 2 are, first, that there was an "entrustment" and/or "dominion"; second, that the entrustment and/or dominion was "in his capacity as a public servant"; third, that there was a "disposal"; and fourth, that the disposal was "dishonest". Now it is evident that the entrustment and/or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity.*

Therefore, the act complained of, namely, the disposal, could not have been done in any other way. If it was innocent, it was

an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because Accused 2 could not dispose of the goods save by the doing of an official act, namely, officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done : in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it."

37. *The scope of Section 197 of the old Code of Criminal Procedure, was also considered in P. Arulswami v. State of Madras [P. Arulswami v. State of Madras, AIR 1967 SC 776 : 1967 Cri LJ 665] where this Court held : (AIR p. 778, para 6)*

> *"6. … It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted."*
>
> *"If the act is totally unconnected with the official duty, there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable…."*

38. *In B. Saha v. M.S. Kochar [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] this Court held : (SCC p. 185, para 18)*

> *"18. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him."*

39. *In Virupaxappa Veerappa Kadampur v. State of Mysore [Virupaxappa Veerappa Kadampur v. State of Mysore, AIR 1963 SC 849 : (1963) 1 Cri LJ 814] cited by Mr Poovayya, a three-Judge Bench of this Court had, in the context of Section*

161 of the Bombay Police Act, 1951, which is similar to Section 170 of the Karnataka Police Act, interpreted the phrase "under colour of duty" to mean "acts done under the cloak of duty, even though not by virtue of the duty".

40. *In Virupaxappa Veerappa Kadampur [Virupaxappa Veerappa Kadampur v. State of Mysore, AIR 1963 SC 849 : (1963) 1 Cri LJ 814] this Court referred (at AIR p. 851, para 9) to the meaning of the words "colour of office" in Wharton's Law Lexicon, 14th Edn., which is as follows:*

> *"Colour of office, when an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour."*

41. This Court also referred (at AIR p. 852, para 9) to the meaning of "colour of office" in Stroud's Judicial Dictionary, 3rd Edn., set out hereinbelow:

> ***"Colour:"Colour of office" is always taken in the worst part, and signifies an act evil done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office, is but a veil to the falsehood, and the thing is grounded upon vice, and the office is as a shadow to it. But "by reason of the office" and "by virtue of the office" are taken always in the best part."***

42. *After referring to the Law Lexicons referred to above, this Court held : (Virupaxappa Veerappa Kadampur case [Virupaxappa Veerappa Kadampur v. State of Mysore, AIR 1963 SC 849 : (1963) 1 Cri LJ 814] , AIR p. 852, para 10)*

> *"10. It appears to us that the words "under colour of duty" have been used in Section 161(1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police officer) prepares a false panchnama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in Stroud's Dictionary "as a veil to his falsehood". The acts thus done in dereliction of his duty*

must be held to have been done "under colour of the duty"."

43. *In Om Prakash v. State of Jharkhand [Om Prakash v. State of Jharkhand, (2012) 12 SCC 72 : (2013) 3 SCC (Cri) 472] this Court, after referring to various decisions, pertaining to the police excess, explained the scope of protection under Section 197 of the Code of Criminal Procedure as follows : (SCC p. 89, para 32)*

> *"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 [K. Satwant Singh v. State of Punjab, AIR 1960 SC 266 : 1960 Cri LJ 410]). 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 [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104]). 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)*

44. In Sankaran Moitra v. Sadhna Das [Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584*: (2006) 2 SCC (Cri) 358] the majority referred to Gill v. R. [Gill v. R., 1948 SCC OnLine PC 10: (1947-48) 75 IA 41: AIR 1948 PC*

128], H.H.B. Gill v. King Emperor [H.H.B. Gill v. King Emperor, 1946 SCC OnLine FC 10: AIR 1947 FC 9]; Shreekantiah Ramayya Munipalli v. State of Bombay [Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287: 1955 Cri LJ 857]; Amrik Singh v. State of PEPSU [Amrik Singh v. State of PEPSU, AIR 1955 SC 309: 1955 Cri LJ 865] ; Matajog Dobey v. H.C. Bhari [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140]; Pukhraj v. State of Rajasthan [Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944]; B. Saha v. M.S. Kochar [B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939]; Bakhshish Singh Brar v. Gurmej Kaur [Bakhshish Singh Brar v. Gurmej Kaur, (1987) 4 SCC 663 : 1988 SCC (Cri) 29]; Rizwan Ahmed Javed Shaikh v. Jammal Patel [Rizwan Ahmed Javed Shaikh v. Jammal Patel, (2001) 5 SCC 7] and held: (Sankaran Moitra case [Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584: (2006) 2 SCC (Cri) 358] , SCC pp. 602-603, para 25)

> *"25. The High Court has stated [Sankaran Moitra v. Sadhana Das, 2003 SCC OnLine Cal 309 : (2003) 4 CHN 82] that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in*

people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of the learned counsel for the complainant that this is an eminently fit case for grant of such sanction."

45. *The dissenting view of C.K. Thakker, J. in Sankaran Moitra [Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584 : (2006) 2 SCC (Cri) 358] supports the contention of Mr Luthra to some extent. However, we are bound by the majority view. Furthermore even the dissenting view of C.K. Thakker, J. was in the context of an extreme case of causing death by assaulting the complainant.*

46. *In K.K. Patel v. State of Gujarat [K.K. Patel v. State of Gujarat, (2000) 6 SCC 195 : 2001 SCC (Cri) 200] this Court referred to Virupaxappa Veerappa Kadampur [Virupaxappa Veerappa Kadampur v. State of Mysore, AIR 1963 SC 849 : (1963) 1 Cri LJ 814] and held : (K.K. Patel case [K.K. Patel v. State of Gujarat, (2000) 6 SCC 195 : 2001 SCC (Cri) 200] , SCC p. 203, para 17)*

"17. The indispensable ingredient of the said offence is that the offender should have done the act "being a public servant". The next ingredient close to its heels is that such public servant has acted in disobedience of any legal direction concerning the way in which he should have conducted as such public servant. For the offences under Sections 167 and 219 IPC the pivotal ingredient is the same as for the offence under Section 166 IPC. The remaining offences alleged in the complaint, in the light of the averments made therein, are ancillary offences to the above and all the offences are parts of the same transaction. They could not have been committed without there being at least the colour of the office or authority which the appellants held."

… … .. ..

55. Devinder Singh v. State of Punjab [Devinder Singh v. State of Punjab, (2016) 12 SCC 87*: (2016) 4 SCC (Cri) 15: (2017) 1 SCC (L&S) 346] cited by Mr Luthra is clearly distinguishable as that was a case of killing by the police in fake encounter. Satyavir Singh Rathi v. State [Satyavir Singh Rathi v. State, (2011) 6 SCC 1: (2011) 2 SCC (Cri) 782] also pertains to a fake encounter, where the deceased was mistakenly identified as a hardcore criminal and shot down without provocation. The version of the police that the police had been attacked first and had retaliated, was found to be false. In the light of these facts, that this Court held that it could not, by any stretch of imagination, be claimed by anybody that a case of murder could be within the expression "colour of duty". This Court dismissed the appeals of the policemen concerned against conviction, inter alia, under Section 302 of the Penal Code, which had duly been confirmed [Satyavir Singh Rathi v. State, 2009 SCC OnLine Del 2973] by the High Court. The judgment is clearly distinguishable.*

....

61. In Om Prakash v. State of Jharkhand [Om Prakash v. State of Jharkhand, (2012) 12 SCC 72 : (2013) 3 SCC (Cri) 472] this Court held : (SCC pp. 90-91 & 95, paras 34 & 42-43)

> *"34. In Matajog Dobey [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140] the Constitution Bench of this Court was considering what is the scope and meaning of a somewhat similar expression 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' occurring in Section 197 of the Criminal Procedure Code (5 of 1898). The Constitution Bench observed that no 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. On the question as to which act falls within the ambit of abovequoted expression, the Constitution Bench concluded that 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 performance*

of his duty. While dealing with the question whether the need for sanction has to be considered as soon as the complaint is lodged and on the allegations contained therein, the Constitution Bench referred to Hori Ram Singh [Hori Ram Singh v. Crown, 1939 SCC OnLine FC 2 : AIR 1939 FC 43] and observed that at first sight, it seems as though there is some support for this view in Hori Ram Singh [Hori Ram Singh v. Crown, 1939 SCC OnLine FC 2 : AIR 1939 FC 43] because Sulaiman, J. has observed in the said judgment that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution and Varadachariar, J. has also stated that : (Matajog Dobey case [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140] , AIR p. 49, para 20)

'20. … the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceedings.'

***

The legal position is thus settled by the Constitution Bench in the above paragraph. Whether sanction is necessary or not may have to be determined from stage to stage. If, at the outset, the defence establishes that the act purported to be done is in execution of official duty, the complaint will have to be dismissed on that ground.

***

42. It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial. This Court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognised as legal by our criminal justice administration system. They amount to State-sponsored terrorism. But, one cannot be oblivious of the fact that there are cases where the police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact. In such circumstances, while the police have to do their legal duty of arresting the criminals, they have also to protect themselves. The requirement of sanction to prosecute affords protection to the policemen, who are sometimes

required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. Sanction must be a precondition to their prosecution. It affords necessary protection to such police personnel. The plea regarding sanction can be raised at the inception.

43. In our considered opinion, in view of the facts which we have discussed hereinabove, no inference can be drawn in this case that the police action is indefensible or vindictive or that the police were not acting in discharge of their official duty. In Zandu Pharmaceutical Works Ltd. [Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122 : 2005 SCC (Cri) 283] this Court has held that the power under Section 482 of the Code should be used sparingly and with circumspection to prevent abuse of process of court but not to stifle legitimate prosecution. There can be no two opinions on this, but, if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of court, the power under Section 482 of the Code must be exercised and proceedings must be quashed. Indeed, the instant case is one of such cases where the proceedings initiated against the police personnel need to be quashed."

… … …

65. The law relating to the requirement of sanction to entertain and/or take cognizance of an offence, allegedly committed by a police officer under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, is well settled by this Court, inter alia by its decisions referred to above.

66. *Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the Government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure,*

read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate Government.

67. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a policeman assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However, if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

68. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of the government sanction for initiation of criminal action against him.

69. The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.

> ***70. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law."***
>
> *(Emphasis supplied)*

11. On a coalesce of the judgments rendered by the Apex Court as afore-quoted, what would unmistakably emerge is, prosecution cannot continue against public servants, if the acts of such public servants were in the course of discharge of their official duties or has reasonable nexus to the discharge of official duties. An illustration is also given by the Apex Court in all the above cases as to what would amount to discharge of official duty and what would amount to private duty and the unmistakable inference that can be drawn in the considered view of this Court is that, if there is nexus *qua* the allegation to the discharge of official duty, sanction for such prosecution of public servant is imperative. In all the aforesaid cases, the Apex Court was considering the ingredients of allegations which sprung from the acts of those Government servants while performing their official duty.

12. It further becomes germane to notice the subsequent judgment of the Apex Court in the case of ***INDRA DEVI v. STATE OF RAJASTHAN***[6] where the Apex Court holds that even if the offences are punishable under Sections 467, 420 or any other provision of the IPC and if it touches upon the discharge of official duty, sanction under Section 197 of the Cr.P.C. becomes mandatory. The Apex Court in the said case has held as follows:

> *"**10.** We have given our thought to the submissions of the learned counsel for the parties. Section 197 Cr.P.C., seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognizance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. (See Subramanian Swamy v. Manmohan Singh [Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64: (2012) 1 SCC (Cri) 1041:(2012) 2 SCC (L&S) 666].)* ***The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. However, such sanction is necessary if the offence alleged against the public servant is committed by him "while acting or purporting to act in the discharge of his official duty" and in order to find out whether the alleged offence is committed "while acting or purporting to act in the discharge of his official duty", the yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was***

[6] ***(2021) 8 SCC 768***

charged had a reasonable connection with the discharge of his duties. (See State of Maharashtra v. Budhikota Subbarao [State of Maharashtra v. Budhikota Subbarao, (1993) 3 SCC 339: 1993 SCC (Cri) 901].) The real question, therefore, is whether the act committed is directly concerned with the official duty.

11. We have to apply the aforesaid test to the facts of the present case. In that behalf, the factum of Respondent 2 not being named in the FIR is not of much significance as the alleged role came to light later on. However, what is of significance is the role assigned to him in the alleged infraction i.e. conspiring with his superiors. What emerges therefrom is that insofar as the processing of the papers was concerned, Surendra Kumar Mathur, the Executive Officer, had put his initials to the relevant papers which was held in discharge of his official duties. Not only that, Sandeep Mathur, who was part of the alleged transaction, was also similarly granted protection. The work which was assigned to Respondent 2 pertained to the subject-matter of allotment, regularisation, conversion of agricultural land and fell within his domain of work. In the processing of application of Megharam, the file was initially put up to the Executive Officer who directed the inspection and the inspection was carried out by the Junior Engineer and only thereafter the Municipal Commissioner signed the file. The result is that the superior officers, who have dealt with the file, have been granted protection while the clerk, who did the paper work i.e. Respondent 2, has been denied similar protection by the trial court even though the allegation is of really conspiring with his superior officers. Neither the State nor the complainant appealed against the protection granted under Section 197 Cr.P.C., qua these two other officers.

12. *We are, thus, not able to appreciate why a similar protection ought not to be granted to Respondent 2 as was done in the case of the other two officials by the trial court and High Court, respectively. The sanction from the competent authority would be required to take cognizance and no sanction had been obtained in respect of any of the officers. It is in view thereof that in respect of the other two officers, the proceedings were*

quashed and that is what the High Court has directed in the present case as well."

(Emphasis supplied)

Therefore, in the light of the judgments so rendered by the Apex Court including the one rendered in the year 2021 in the case of ***INDRA DEVI*** what would unmistakably emerge is that previous sanction for prosecution either under Section 19 of the PC Act or under Section 197 of the Cr.P.C., is mandatory. The afore-quoted judgments rendered by the Apex Court would cover the issue on all its fours.

13. The State has placed much reliance upon the judgment in the case of ***PUNJAB STATE WAREHOUSING CORPORATION v. BHUSHAN CHANDER AND ANOTHER***[7] to buttress its submission that sanction for offences punishable under Sections 467, 468, 471 or 409 of the IPC would not require by their very nature. The issue before the Apex Court can be gathered from the beginning of the judgment and it reads as follows:

"The singular question that has emanated in this appeal, by special leave, is whether the High Court has correctly accepted [Bhushan Chander v. State of Punjab, 2011 SCC

[7] (2016) 13 SCC 44

> *OnLine P&H 5393] the submission advanced on behalf of the first respondent, who was convicted for offences punishable under Sections 409/467/468/471 of the Penal Code, 1860 (for short "IPC") and had been awarded sentence for each of the offences with the stipulation that they would run concurrently, that he being an employee of the appellant Corporation is a public servant and the trial had commenced without obtaining sanction under Section 197 of the Code of Criminal Procedure, 1973 (Cr.P.C.,) and hence, the trial in entirety was invalid and as a result the conviction and sentence deserved to be set aside."*

The Apex Court was answering a question whether an employee of Punjab State Warehousing Corporation was a public servant or otherwise and the trial which had commenced without obtaining sanction under Section 197 Cr.P.C., was invalid in its entirety, which resulted in the conviction and sentence being set aside. The Apex Court answers the issue at paragraphs 20 to 24, which reads as follows:

> ***"20.*** *A survey of the precedents makes it absolutely clear that there has to be a reasonable connection between the omission or commission and the discharge of official duty or the act committed was under the colour of the office held by the official. If the act(s), omission or commission of which is totally alien to the discharge of the official duty, question of invoking Section 197 Cr.P.C., does not arise. We have already reproduced few passages from the impugned order from which it is discernible that to arrive at the said conclusion the learned Single Judge has placed reliance on the authority in B. Saha [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] . The conclusion is based on the assumption that the allegation is that while being a public servant, the alleged criminal breach of trust was committed while he was in public service. Perhaps the learned Judge has kept in his mind some kind of concept*

relating to dereliction of duty. The issue was basically entrustment and missing of the entrusted items. There is no dispute that the prosecution had to prove the case. But the public servant cannot put forth a plea that he was doing the whole act as a public servant. Therefore, it is extremely difficult to appreciate the reasoning of the High Court. As is noticeable he has observed that under normal circumstances the offences under Sections 467, 468 and 471 IPC may be of such nature that obtaining of sanction under Section 197 Cr.P.C., is not necessary but when the said offences are interlinked with an offence under Section 409 IPC sanction under Section 197 for launching the prosecution for the offence under Section 409 is a condition precedent. The approach and the analysis are absolutely fallacious. We are afraid, though the High Court has referred to all the relevant decisions in the field, yet, it has erroneously applied the principle in an absolute fallacious manner. No official can put forth a claim that breach of trust is connected with his official duty. Be it noted the three-Judge Bench in B. Saha [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] has distinguished Shreekantiah Ramayya Munipalli [Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287 : 1955 Cri LJ 857] keeping in view the facts of the case. It had also treated the ratio in Amrik Singh [Amrik Singh v. State of Pepsu, AIR 1955 SC 309 : 1955 Cri LJ 865] to be confined to its own peculiar facts. The test to be applied, is as has been stated by Chandrasekhara Aiyar, J. in the Constitution Bench in Matajog Dobey [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140] which we have reproduced hereinbefore. The three-Judge Bench in B. Saha [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] applied the test laid down in Gill case [Gill v. R., (1948) 10 FCR 19: AIR 1948 PC 128: (1947-48) 75 IA 41: 1948 SCC OnLine PC 10] wherein Lord Simonds has reiterated that 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.

***21.** Tested on the touchstone of the said principles, it cannot be said that in the obtaining factual matrix, sanction under Section 197 Cr.P.C., was necessary. We are compelled to observe that the High Court should have been more vigilant in understanding the ratio of the decisions of this Court.*

22. *Another line of argument was advanced on behalf of the appellant Corporation that even if the respondents are treated as public servants, they being the employees of the Corporation, they do not get the protective shelter of Section 197 Cr.P.C.,. In Lakshmansingh Himatsingh Vaghela [Lakshmansingh Himatsingh Vaghela v. Naresh Kumar Chandrashanker Jah, (1990) 4 SCC 169: 1990 SCC (Cri) 558], a three-Judge Bench dissecting the anatomy of Section 197(1) Cr.P.C., opined that the said provision clearly intends to draw a line between public servants and to provide that only in the case of the higher ranks should the sanction of the Government to their prosecution be necessary. While a public servant holding an office of the kind mentioned in the section is as such public servant appointed to another office, his official acts in connection with the latter office will also relate to the former office. Thereafter, the Court ruled: (SCC p. 171, para 5)*

> *"5. … The words "removable from office" occurring in Section 197 signify removal from the office he is holding. The authority mentioned in the section is the authority under which the officer is serving and competent to terminate his services. If the accused is under the service and pay of the local authority, the appointment to an office for exercising functions under a particular statute will not alter his status as an employee of the local authority."*

In the said case, the appellant was admittedly a laboratory official in the service and pay of Municipal Corporation of Ahmedabad. His appointment as Public Analyst by the Government, as held by this Court, did not confer him the status of a public servant or an officer under service and pay of the Government. Being of this view, the Court opined he was not a public servant removable only by the State Government and accordingly allowed the appeal.

23. *In Mohd. Hadi Raja v. State of Bihar [Mohd. Hadi Raja v. State of Bihar, (1998) 5 SCC 91 : 1998 SCC (Cri) 1265 : AIR 1998 SC 1945] the question arose whether Section 197 Cr.P.C., was applicable for prosecuting officers of the public sector undertakings or the government companies which can be treated as State within the meaning of Article 12 of the Constitution of India. The Court referred to Section 197 Cr.P.C.,,*

noted the submissions and eventually held that the protection by way of sanction under Section 197 Cr.P.C., is not applicable to the officers of government companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the Government.

24. *The High Court has not accepted the submission of the Corporation in this regard. We are constrained to note that the decision in Mohd. Hadi Raja [Mohd. Hadi Raja v. State of Bihar, (1998) 5 SCC 91: 1998 SCC (Cri) 1265 : AIR 1998 SC 1945] has been referred to in the grounds in this appeal. There is nothing on record to suggest that the said decision was cited before the High Court. It has come to our notice on many an occasion that the relevant precedents are not cited by the Corporations and the government undertakings before the High Court. We should, as advised at present, only say that a concerted effort should be made in that regard so that a stitch in time can save nine."*

The Apex Court was rendering its judgment on the facts obtaining in the case therein. Subsequent judgments of the Apex Court which are quoted hereinabove would clearly indicate that sanction is imperative even for offences involving cheating, forgery or criminal breach of trust. In the light of much emphasis being placed upon the aforesaid judgment by the State, its inapplicability to the facts of the case become vindicated in the light of a subsequent judgment of the Apex Court in which all the earlier judgments quoted *supra* bear reference and consideration. The

Apex Court in the case of ***A.SRINIVASULU v. STATE***[8] has held as follows:

> ***"29.*** *There is no dispute about the fact that A-1 to A-4, being officers of a company coming within the description contained in the Twelfth item of Section 21 of the IPC, were 'public servants' within the definition of the said expression under Section 21 of the IPC. A-1 to A-4 were also public servants within the meaning of the expression under Section 2(c)(iii) of the PC Act. Therefore, there is a requirement of previous sanction both under Section 197(1) of the Code and under Section 19(1) of the PC Act, for prosecuting A-1 to A-4 for the offences punishable under the IPC and the PC Act.*
>
> ***30.*** *Until the amendment to the PC Act under the Prevention of Corruption (Amendment) Act, 2018 (Act 16 of 2018), with effect from 26.07.2018, the requirement of a previous sanction under Section 19(1)(a) was confined only to a person "**who is employed**". On the contrary, Section 197(1) made the requirement of previous sanction necessary, both in respect of "any person who is" and in respect of "any person who was" employed. By the amendment under Act 16 of 2018, Section 19(1)(a) of the PC Act was suitably amended so that previous sanction became necessary even in respect of a person who "was employed at the time of commission of the offence".*
>
> ***31.*** *The case on hand arose before the coming into force of the Prevention of Corruption (Amendment) Act, 2018 (Act 16 of 2018). Therefore, no previous sanction under Section 19(1) of the PC Act was necessary insofar as A-1 was concerned, as he had retired by the time a final report was filed. He actually retired on 31.08.1997, after 7 months of registration of the FIR (31.01.1997) and 5 years before the filing of the final report (16.07.2002) and 6 years before the Special Court took cognizance (04.07.2003). But previous sanction under Section 19(1) of the PC Act was required in respect of A-3 and A-4, as they were in service at the time of the Special Court taking cognizance. Therefore, the Agency sought sanction, but the*

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[8] *2023 SCC OnLine SC 900*

Management of BHEL refused to grant sanction not once but twice, insofar as A-3 and A-4 are concerned.

32. *It is by a quirk of fate or the unfortunate circumstances of having been born at a time (and consequently retiring at a particular time) that the benevolence derived by A-3 and A-4 from their employer, was not available to A-1. Had he continued in service, he could not have been prosecuted for the offences punishable under the PC Act, in view of the stand taken by BHEL.*

33. *It appears that BHEL refused to accord sanction by a letter dated 24.11.2000, providing reasons, but the CVC insisted, vide a letter dated 08.02.2001. In response to the same, a fresh look was taken by the CMD of BHEL. Thereafter, by a decision dated 02.05.2001, he refused to accord sanction on the ground that it will not be in the commercial interest of the Company nor in the public interest of an efficient, quick and disciplined working in PSU.*

34. *The argument revolving around the necessity for previous sanction under Section 197(1) of the Code, has to be considered keeping in view the above facts. It is true that the refusal to grant sanction for prosecution under the PC Act in respect of A-3 and A-4 may not have a direct bearing upon the prosecution of A-1. But it would certainly provide the context in which the culpability of A-1 for the offences both under the IPC and under the PC Act has to be determined.*

35. *It is admitted by the respondent-State that no previous sanction under section 197(1) of the Code was sought for prosecuting A-1. The stand of the prosecution is that the previous sanction under Section 197(1) may be necessary only when the offence is allegedly committed "**while acting or purporting to act in the discharge of his official duty**". Almost all judicial precedents on Section 197(1) have turned on these words. Therefore, we may now take a quick but brief look at some of the decisions.*

36. *Dr. Hori Ram Singh v. The Crown*[3] *is a decision of the Federal Court, cited with approval by this court in several decisions. It arose out of the decision of the Lahore High Court against the decision of the Sessions Court which acquitted the*

appellant of the charges under Sections 409 and 477A IPC for want of consent of the Governor. Sir S. Varadachariar, with whose opinion Gwyer C.J., concurred, examined the words, "any act done or purporting to be done in the execution of his duty" appearing in Section 270(1) of the Government of India Act, 1935, which required the consent of the Governor. ***The Federal Court observed at the outset that this question is substantially one of fact, to be determined with reference to the act complained of and the attendant circumstances****. The Federal Court then referred by way of analogy to a number of rulings under Section 197 of the Code and held as follows:—*

> *"The reported decisions on the application of sec. 197 of the Criminal Procedure Code are not by any means uniform. In most of them, the actual conclusion will probably be found to be unexceptionable, in view of the facts of each ease; but, in some, the test has been laid down in terms which it is difficult to accept as exhaustive or correct. Much the same may be said even of decisions pronounced in England, on the language, of similar statutory provisions (see observations in Booth v. Clive.* ***It does not seem to me necessary to review in detail the decisions given under sec. 197 of the Criminal Procedure Code which may roughly be classified as falling into three groups, so far as they attempted to state something in the nature of a test. In one group of cases, it is insisted that there must be something in the nature of the act complained of that attaches it to the official character of the person doing it : cf.*** *In re Sheik Abdul Khadir Saheb; Kamisetty Raja Rao v. Ramaswamy, Amanat Ali v. King-emperor, King-Emperor v. Maung Bo Maung and Gurushidayya Shantivirayya Kulkarni v. King-Emperor.* ***In another group, more stress has been laid on the circumstance that the official character or status of the accused gave him the opportunity to commit the offence. It seems to me that the first is the correct view. In the third group of cases, stress is laid almost exclusively on the fact that it was at a time when the accused was engaged in his official duty that the alleged offence was said to have been committed [see*** *Gangaraju v. Venki,*

> ***quoting from Mitra's Commentary on the (criminal Procedure Code). The use of the expression "while acting" etc., in sec. 197 of the Criminal Procedure Code (particularly its introduction by way of amendment in 1923) has been held to lend some support to this view. While I do not wish to ignore the significance of the time factor, it does not seem to me right to make it the test. To take an illustration suggested in the course of the argument, if a medical officer, while on duty in the hospital, is alleged to have committed rape on one of the patients or to have stolen a jewel from the patient's person, it is difficult to believe that it was the intention of the Legislature that he could not be prosecuted for such offences except with the previous sanction of the Local Government"***

37. *It is seen from the portion of the decision extracted above that the Federal Court categorised in Dr. Hori Ram Singh (supra), the decisions given under Section 197 of the Code into three groups namely* ***(i) cases where it was held that there must be something in the nature of the act complained of that attaches it to the official character of the person doing it; (ii) cases where more stress has been laid on the circumstance that the official character or status of the accused gave him the opportunity to commit the offence;*** *and* ***(iii) cases where stress is laid almost exclusively on the fact that it was at a time when the accused was engaged in his official duty that the alleged offence was said to have been committed.*** *While preferring the test laid down in the first category of cases, the Federal Court rejected the test given in the third category of cases by providing the illustration of a medical officer committing rape on one of his patients or committing theft of a jewel from the patient's person.*

38. *In Matajog Dobey v. H.C. Bhari*[4] *a Constitution Bench of this Court was concerned with the interpretation to be given to the words, "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" in Section 197 of the Code. After referring to the decision in Dr. Hori Ram Singh, the Constitution Bench summed up the result of the discussion, in paragraph 19 by holding*

*: **"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.**"*

***39.** In State of Orissa through Kumar Raghvendra Singh v. Ganesh Chandra Jew[5], a two Member Bench of this Court explained that the protection under Section 197 has certain limits and that it is available only when the alleged act is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. The Court also explained that 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.*

***40.** The above decision in State of Orissa (supra) was followed (incidentally by the very same author) in K. Kalimuthu v. State by DSP[6] and Rakesh Kumar Mishra v. State of Bihar[7].*

***41.** In Devinder Singh v. State of Punjab through CBI[8], this Court took note of almost all the decisions on the point and summarized the principles emerging therefrom, in paragraph 39 as follows:*

> *"**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. <u>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</u>***

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.
…."

42. *In D. Devaraja v. Owais Sabeer Hussain, this Court explained that sanction is required not only for acts done in the discharge of official duty but also required for any act purported to be done in the discharge of official duty and/or act done under colour of or in excess of such duty or authority. This Court also held that to decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty.*

43. *Keeping in mind the above principles, if we get back to the facts of the case, it may be seen that the primary charge against A-1 is that with a view to confer an unfair and undue advantage upon A-5, he directed PW-16 to go for limited tenders by dictating the names of four bogus companies, along with the name of the chosen one and eventually awarded the contract to the chosen one. It was admitted by the prosecution that at the relevant point of time, the Works Policy of BHEL marked as Exhibit P-11, provided for three types of tenders,*

*namely **(i)** Open Tender; **(ii)** Limited/Restricted Tender; and **(iii)** Single Tender.*

***44.** Paragraph 4.2.1 of the Works Policy filed as Exhibit P-11 and relied upon by the prosecution laid down that as a rule, only works up to Rs. 1,00,000/- should be awarded by Restricted Tender. However, paragraph 4.2.1 also contained a rider which reads as follows:*

> *"4.2.1 … However even in cases involving more than Rs. 1,00,000/- if it is felt necessary to resort to Restricted Tender due to urgency or any other reasons it would be open to the General Managers or other officers authorised for this purpose to do so after recording reasons therefor."*

***45.** Two things are clear from the portion of the Works Policy extracted above. One is that a deviation from the rule was permissible. The second is that even General Managers were authorised to take a call, to deviate from the normal rule and resort to Restricted Tender.*

***46.** Admittedly, A-1 was occupying the position of Executive Director, which was above the rank of a General Manager. According to him he had taken a call to go for Restricted Tender, after discussing with the Chairman and Managing Director. The Chairman and Managing Director, in his evidence as PW-28, denied having had any discussion in this regard.*

***47.** For the purpose of finding out whether A-1 acted or purported to act in the discharge of his official duty, it is enough for us to see whether he could take cover, rightly or wrongly, under any existing policy. Paragraph 4.2.1 of the existing policy extracted above shows that A-1 at least had an arguable case, in defence of the decision he took to go in for Restricted Tender. Once this is clear, his act, even if alleged to be lacking in bona fides or in pursuance of a conspiracy, would be an act in the discharge of his official duty, making the case come within the parameters of Section 197(1) of the Code. Therefore, the prosecution ought to have obtained previous sanction. The Special Court as well as the High Court did not apply their mind to this aspect.*

48. *Shri Padmesh Mishra, learned counsel for the respondent placed strong reliance upon the observation contained in paragraph 50 of the decision of this Court in Parkash Singh Badal v. State of Punjab. It reads as follows:—*

> ***"50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence."***

49. *On the basis of the above observation, it was contended by the learned counsel for the respondent that any act done by a public servant, which constitutes an offence of cheating, cannot be taken to have been committed while acting or purporting to act in the discharge of official duty.*

50. *But the above contention in our opinion is far-fetched. The observations contained in paragraph 50 of the decision in Parkash Singh Badal (supra) are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 120B cannot be regarded as having been committed by a public servant while acting or purporting to act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 of the Code does not carve out any group of offences that will fall outside its purview. Therefore, the observations contained in para 50 of the decision in Parkash Singh Badal cannot be taken as carving out an exception judicially, to a statutory prescription. In fact,* ***Parkash Singh Badal*** *cites with approval the other decisions (authored by the very same learned Judge) where this Court made a distinction between an act, though in excess of the duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. Interestingly, the proposition laid down in Rakesh Kumar Mishra (supra) was distinguished in paragraph 49 of the decision*

in Parkash Singh Badal, before the Court made the observations in paragraph 50 extracted above.

51. *No public servant is appointed with a mandate or authority to commit an offence. Therefore, if the observations contained in paragraph 50 of the decision in Parkash Singh Badal are applied, any act which constitutes an offence under any statute will go out of the purview of an act in the discharge of official duty. The requirement of a previous sanction will thus be rendered redundant by such an interpretation.*

52. *It must be remembered that in this particular case, the FIR actually implicated only four persons, namely PW-16, A-3, A-4 an A-5. A-1 was not implicated in the FIR. It was only after a confession statement was made by PW-16 in the year 1998 that A-1 was roped in. The allegations against A-1 were that he got into a criminal conspiracy with the others to commit these offences. But the Management of BHEL refused to grant sanction for prosecuting A-3 and A-4, twice, on the ground that the decisions taken were in the realm of commercial wisdom of the Company.* ***If according to the Management of the Company, the very same act of the co-conspirators fell in the realm of commercial wisdom, it is inconceivable that the act of A-1, as part of the criminal conspiracy, fell outside the discharge of his public duty, so as to disentitle him for protection under Section 197(1) of the Code****.*

53. *In view of the above, we uphold the contention advanced on behalf of A-1 that the prosecution ought to have taken previous sanction in terms of Section 197(1) of the Code, for prosecuting A-1, for the offences under the IPC."*

(Emphasis supplied)

14. In the light of the afore-quoted judgments of the Apex Court what would unmistakably emerge is that the concerned Court could not have taken cognizance without at the outset sanction

being accorded to prosecute the petitioner. It is germane to notice that when the crime came to be registered, the petitioner was not named as an accused. It is later when the Police conducted investigation and filed 'B' report before the concerned Court, while taking cognizance based upon the protest memo, cognizance is taken against the petitioner. Therefore, sanction in the aforesaid facts as well, becomes imperative. Since there is no sanction accorded to prosecute the petitioner prior to the order of the learned Sessions Judge taking cognizance of the offence, I deem it appropriate to obliterate the proceedings against the petitioner, reserving liberty to the concerned Court to proceed against the petitioner only after a valid sanction from the hands of the Competent Authority is placed before it.

15. For the aforesaid reasons, I pass the following:

O R D E R

(i) Criminal Petition is allowed.

(ii) The order dated 13-12-2022 passed by the XXIII Additional City Civil & Sessions Judge & Special Judge

(P.C.Act) Bengaluru in Crime No.36 of 2015, taking cognizance of the offence stands quashed, only insofar as it concerns the petitioner.

(iii) It is made clear that the observations made in the course of this order are only for the purpose of consideration of the case of petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings against any other accused in Crime No.36 of 2015.

Sd/-
JUDGE

bkp
CT:MJ