5542/2021

murugesh v Charati

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2021

BEFORE

THE HON'BLE MR.JUSTICE ASHOK G. NIJAGANNAVAR

CRIMINAL PETITION NO.3696 OF 2013
C/W
CRIMINAL PETITION NO.5696 OF 2013

IN CRL.PETITION NO: 3696 OF 2013:

BETWEEN:

1. AIR INDIA LIMITED,
   AIR INDIA EXPRESS,
   AIR-INDIA BUILDING
   NAIMAN POINT
   MUMBAI – 400050,
   REPRESENTED BY ITS
   GENERAL MANAGER,
   MAKARAND M JOSHI.

2. MR ANSBERT D SOUZA,
   S/O LATE JOSEP D SOUZA,
   AGED 56 YEARS,
   R/O FLAT NO.7,
   AIR INDIA APARTMENTS,
   NO.61B, PALI HILLS,
   BANDRA,
   MUMBAI-400050. ...PETITIONERS

(BY SRI GURUDAS S KANNUR SR. ADV. FOR
SRI MURUGESH V CHARATI, ADVOCATE)

HIGH COURT OF KARNATAKA

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AND:

1. STATE OF KARNATAKA,
   REPRESENTED BY BAJPE
   POLICE STATION,
   DAKSHINA KANNADA
   MANGALORE
   THROUGH THE SPP
   HIGH COURT OF KARNATAKA,
   BANGALORE – 1.

2. 812 FOUNDATION,
   REPRESENTED BY
   MRS NAYANA PAI,
   SECRETARY,
   812 FOUNDATION,
   BHAGAVATHI NAGAR,
   OPP RESIDENCE OF
   COMMISSIONER OF POLICE,
   MANNAGUDDA,
   MANGALORE-575003.

...RESPONDENTS

(BY SRI K NAGESHWARAPPA, HCGP FOR R1,
SRI YESHWANTH SHENOY, FOR R2 PARTY-IN-PERSON)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 CR.P.C PRAYING TO QUASH THE ORDER DATED:19.02.2013 PASSED BY THE JMFC-II COURT, MANGALORE IN PRIVATE CASE NO.35/12, WHEREBY THE LEARNED MAGISTRATE HAS TAKEN COGNIZANCE OF THE OFFENCE U/S 304A IPC ALONG WITH DEEMED SANCTION AGAINST PETITIONER Nos.1 AND 2.

IN CRL. PETITION NO.5696 OF 2013:

BETWEEN:

1. AIRPORTS AUTHORITY OF INDIA,
   RAJIV GANDHI BHAWAN,
   SAFDARJUNG AIRPORT,
   NEW DELHI - 110 003,
   THROUGH ITS AUTHORIZED
   REPRESENTATIVE
   MR JAGDISH KUMAR GOEL.

2. MR PETER ABRAHAM,
   S/O K S ABRAHAM,
   AGED ABOUT 53 YEARS,
   PRESENTLY WORKING AS
   AIRRPORT DIRECTOR,
   CALICUT INTERNATIONAL AIRPORT
   MALAPPURAM DIST,
   KERALA – 521603.

...PETITIONERS

(BY SRI UDAYA HOLLA, SENIOR COUNSEL FOR
SRI R.V.NAIK, ADVOCATE FOR P2,
SRI MADHUKAR S, ADVOCATE FOR P1)

AND:

1. STATE OF KARNATAKA,
   REPRESENTED BY
   BAJPE POLICE STATION,
   DAKSHINA KANNADA,
   MANAGALORE,
   THROUGH THE SPP
   HIGH COURT OF KARNATAKA-560 001.

2. 812 FOUNDATION,
   REPRESENTED BY
   MRS NAYANA PAI SECRETARY
   812, FOUNDATION

HIGH COURT OF KARNATAKA BANGALORE

BHAGAVATHI NAGAR,
OPP RESIDENCE OF
COMMISSIONER OF POLICE,
MANNAGUDDA,
MANGALORE - 575 003. ...RESPONDENTS

(BY SRI K NAGESHWARAPPA, HCGP FOR R1,
SMT.HARSHITHA R.M, ADVOCATE FOR R2)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 CR.P.C PRAYING TO QUASH THE ORDER DATED 19.2.2013 PASSED BY THE JMFC, MANGALORE, D.K. IN PRIVATE CASE NO.35/2012 WHEREBY THE LEARNED MAGISTRATE HAS TAKEN COGNIZANCE OF THE OFFENCE UNDER SECTION 304-A OF IPC ALONG WITH DEEMED SANCTION AGAINST THE PETITIONERS AND TO QUASH THE PRIVATE COMPLAINT NO.35 OF 2012 PENDING BEFORE THE JMFC-II, MANGALORE, D.K.

THESE PETITIONS HAVING BEEN HEARD THROUGH VIDEO CONFERENCE AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Crl.P.3696/2013 is filed under Section 482 Cr.P.C. by petitioners-accused Nos.2 and 5.

Crl.P.5696/2013 is filed under Section 482 Cr.P.C. read with Section 227 of Constitution of India by petitioners-accused Nos.1 and 9.

The petitioners, who have been arraigned as accused in P.C.35/2012 registered for the offences punishable under Sections 304(11), 304A, 337, 338 read with Section 34 of IPC and Sections 6, 45, 161, Part V, Schedule 11, Section O of the Air Craft Rules, 1937 pending on the file of JMFC-II Court, Mangaluru, are seeking quashing of proceedings initiated as per order dated 19.02.2013.

2. Brief background of the case is that a private complaint under Section 200 Cr.P.C. came to be filed by respondent No.2-812 Foundation, represented by its Secretaries Mrs.Nayana Pai and Mr.Yeshwanth Shenoy, on 06.03.2012 for the offence punishable under Section 304(II), 304A, 337, 338 of IPC and Sections 6, 45, 161 Part V Schedule II, Section O of the Aircraft Rules 1937 read with Section 34 of IPC.

3. The allegations made in the complaint are as under:

i. On 22nd May 2010 Air India Express Flight 812 crashed at the Mangalore airport and FIR No.0120 was registered at Bajpe Police Station, on 13th February the investigating the officer filed charge sheet informing that the case against the accused person in the charge sheet are dead as such the matter is abated. The I.O without perusing the important evidence namely the report of Court of inquiry has submitted the report.

ii. The accident is a direct consequence of willful and gross negligence on the part of the Air authority of India, Air India, and Directorate General of Civil Aviation.

iii. One Mr.Arthur Perira had filed Writ petition Nos.37681/97 and 20905/2002 against Air Authority of India. Both petitions were disposed off by this Court directing the Air Authority of India and Government to comply with laws. Then, SLP No.1172/2003 was filed wherein, the same direction was given by the Supreme Court.

iv. The Airport and the constructions are not as per the specifications of ICAO (Aerodrome design and operations) but the inquiry officers have deliberately

tried to justified the presence of concrete structures which are not permissible.

v. The death of 158 innocent passengers was due to the failure of the officers to perform the duty otherwise mandated by statute.

vi. The accused Nos.1,7,8,9 and 10 were duty bound to maintain airport in accordance with ICAO standards and accused Nos.3,11,13, 14 and 15 were duty bond to ensure no licenses are issued to airports which did not meet ICAO norms, accused Nos.2,4,5 and 6 were duty bound to conduct there own risk assessment of the airport but all these officers have failed to perform their duties.

vii. There was no proper fire fighting service at the airport there was no preparedness in accordance with ICAO norms. There was no arrangements for conducting rescue operations in the event of air crash.

viii. No emergency access roads were provided in the Aerodrome so as to facilitate minimum response times and there was no surface to provide safeguards.

ix. There were no suitable rescue equipment and services at the airport.

x. The airport authority has committed breach of is statutory duties and has failed to follow the directions of the Karnataka High Court and Supreme Court.

xi. No action is taken for correction of the mistake to prevent the possibility of repetition of the accident.

xii. The DGCA has failed to ensure that the airport meets all requirements in accordance with air craft rules 1937 and ICAO guidelines. The DGCO has also fail to verify the ATPL license and log book of PIC (Pilot in Command) before issuing FATA license and the same has been issued in violation of CAR and aircraft rules.

xiii. The operator (Air India) has failed in ensuring that pilots have all valid licenses before they are allowed to fly.

xiv. The captain was not rostered as per the original roster made available to the pilots.

xv. The Air carrier/operator has failed to conduct the proper risk assessment of the airport and take appropriate action to eliminate or mitigate to approach and landing accent reduction procedure.

xvi. The DGCO had continued to issue air operators certificates with glaring deficiencies in safety risk management in violation of air craft act.

xvii. Accused No.10 captain Glusica did not qualified to meet the eligibility requirements for an issue of FATA license.

xviii. The accused have committed the offences under Section 304(II), 304(A), 337, 338 read with Section 34 IPC and Sections 6, 45, 161 part(V), schedule II Section O of Aircraft Rules 1937.

4. The complaint was registered and the case was posted to hear on cognizance and also on the point of maintainability of complaint. On hearing the complainant on 18.02.2013 the learned Magistrate has passed the order dated 19.02.2013 taking cognizance for the offence punishable under Section 304A IPC and also directing the office to register the case in PCR and for issuance of summons. Being aggrieved by the order dated 19.02.2013 the petitioners-accused have filed these petitions.

5. Sri Gurudas S.Kannur, learned senior counsel representing the petitioners in Crl.P.3696/2013 and Sri.Uday Holla,

learned senior counsel representing the petitioners in Crl.P.5696/2013, have made elaborate submissions challenging the order passed by the learned Magistrate. The grounds stated by the said learned senior counsels in their oral and written submissions are summarized as under:

(1) The trial Court could not have taken the cognizance of the complaint without the sanction under Section 197 Cr.P.C.

(2) The trial Court erred in interpreting the judgments of the Apex Court in the cases of *Subramanain Swamy* and *Vineet Narain*.

(3) The trial Court erred in applying the CVC rules to the present case, whereas the CVC rules specifically pertains to Section 19 of Prevention of Corruption Act.

(4) The trial Court has failed to take into consideration the Court of Inquiry report submitted by the Committee headed by experts, who after holding a public enquiry and examining nearly 100 witnesses and after inspecting and analyzing the simulator flight to replicate the descent and approach profile of aircraft, cockpit voice recorder, black box and also examining air traffic control tape recorder system at Mangaluru.

(5) The trial Court has committed error in not considering the opinion report submitted by the experts.

(6) Delay in filing the FIR-complaint liable to be quashed.

(7) It is a malafide complaint filed with an intention to harass the petitioners and other officials.

(8) The sanction under Section 156 (3) Cr.P.C. is must for investigation without which Magistrate cannot even order investigation.

6. In support of the aforesaid contentions, the following decisions have been relied on by the learned senior counsels:

i. (2012) 3 SCC 64 Subramanain Swamy vs. Manmohan Singh and another

ii. (2013) 10 SCC 705 Anilkumar & Ors. Vs. M.K.Aiyappa & another

iii. (2018) 5 SCC 557 Manju Surana vs. Sunil Arora & others

iv. (2015) 6 SCC 287 Priyanka Srivastava & another vs. State of Uttar Pradesh & Others

v. (2019) SCC Online SC 1049 Bharath Sanchar Nigam Limited & Others vs. Pramod V Sawanth & another

vi. Writ Petition (Civil) No(s) 749/2013 812 Foundation vs. Union of India & others.

vii. (2016) 12 SCC 87 Devinder Singh and others vs. State of Punjab through CBI

viii. (2015) 1 SCC 513 Rajib Ranjan and others vs. R Vijaykumar.

ix. (2010) 8 SCC 775 Kishan Singh (dead) through LRs. Vs. Gurpal Singh and others

x. (2018) 12 SCC 625 Karan Singh Tyagi vs. State of Uttar Pradesh and others

xi. (1997) 7 SCC 231 Sahib Singh vs. State of Haryana

xii. (2009) 9 SCC 682 M N Ojha and others vs. Alok Kumar Srivastav and another

xiii. (2004) 8 SCC 40 State Of Orissa through Kumar Raghvendra Singh and others vs. Ganesh Chandra Jew

xiv. (2008) 8 SCC 77 Baijnath Jha vs. Sita Ram and another

xv. (2014) 7 SCC 215 Rishipal Singh vs. State of Uttar Pradesh and another

xvi. (2013) 6 SCC 740 Chandran Ratnaswami vs. K C Palanisamy and others.

xvii. AIR 1969 SC 147 State of Madras vs. N K Nataraja Mudaliar

xviii. (2004) 9 SCC 362 N D Jayal and another vs. Union of India and others

xix. (2013) 6 SCC 620 G Sundarrajan vs. Union of India and others.

xx. 1992 Suppl. 1 SCC 335 State of Harayana vs. Bhajan Lal.;

xxi. (2006) 6 SCC 736 Indian Oil Coprortion vs. NEPC India Ltd.,;

xxii. (1998) 5 SCC 749 Pepsi Foods Ltd., vs. Special Judicial Magistrate;

xxiii. (2004) 4 SCC 432 Jagdish Ram vs. State of Rajasthan

xxiv. (1976) 3 SCC 736 Smt.Nagavva vs. Veeranna Konjalgi

xxv. (1988) 1 SCC 692 Madhavrao Sindya vs. Sambhaji Rao Angre.

7. The relevant observations made by the Apex Court and ratio laid down in the decisions cited by the learned senior counsels are as under:

Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64

40. In Raj Kumar Jain case [(1998) 6 SCC 551 : 1998 SCC (Cri) 1485] , this Court considered the question whether CBI was required to obtain sanction from the prosecuting authority before approaching the Court for accepting the report under Section 173(2) CrPC. This question was considered in the backdrop of the fact that CBI, which had investigated the case registered against the respondent under Section 5(2) read with Section 5(1)(e) of the 1947 Act found that the allegation made against the respondent could not be substantiated. The Special Judge declined to accept the report submitted under Section 173(2) CrPC by observing that CBI was required to place materials collected during

investigation before the sanctioning authority and it was for the authority concerned to grant or refuse sanction. The Special Judge opined that only after the decision of the sanctioning authority, CBI could submit the report under Section 173(2). The High Court dismissed the petition filed by CBI and confirmed the order of the Special Judge.

47. After examining various facets of the matter in detail, the three-Judge Bench in its final order in Vineet Narain [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] observed: (SCC p. 268, paras 55-56)

> "55. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out

should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.

80. I may not be understood to have expressed any doubt about the constitutional validity of Section 19 of the PC Act, but in my judgment the power under Section 19 of the PC Act must be reasonably exercised. In my judgment Parliament and the appropriate authority must consider restructuring Section 19 of the PC Act in such a manner as to make it consonant with reason, justice and fair play.

81. In my view, Parliament should consider the constitutional imperative of Article 14 enshrining the Rule of Law wherein "due process of law" has been read into by introducing a time-limit in Section 19 of the PC Act, 1988 for its working in a reasonable manner. Parliament may, in my opinion, consider the following guidelines:

(a) All proposals for sanction placed before any sanctioning authority empowered to grant sanction for prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the authority concerned.

(b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in clause (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time-limit.

(c) At the end of the extended period of time-limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time-limit.

Anil Kumar v. M.K. Aiyappa, (2013) 10 SCC 705 the Hon'ble Apex Court has stated the observation made in the following decision :

14. In State of W.B. v. Mohd. Khalid [(1995) 1 SCC 684 : 1995 SCC (Cri) 266], the Apex Court has observed as follows:

"13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report

or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out." [Ed.: As considered in State of Karnataka v. Pastor P. Raju, (2006) 6 SCC 728, 734, para 13 : (2006) 3 SCC (Cri) 179.]

The meaning of the said expression was also considered by this Court in Subramanian Swamy case [(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] .

22. Further, this Court in Army Headquarters v. CBI [(2012) 6 SCC 228 : (2012) 3 SCC (Cri) 88] opined as follows: (SCC p. 261, paras 82-83)

"82. Thus, in view of the above, the law on the issue of sanction can be summarised to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is

obligatory on the part of the executive authority to protect him.

83. If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab initio...."

Manju Surana v. Sunil Arora, (2018) 5 SCC 557 :

30. In L. Narayana Swamy v. State of Karnataka [L. Narayana Swamy v. State of Karnataka, (2016) 9 SCC 598 : (2016) 3 SCC (Cri) 696 : (2016) 2 SCC (L&S) 837] (two-Judge Bench), the judgment in Anil Kumar v. M.K. Aiyappa [Anil Kumar v. M.K. Aiyappa, (2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] was followed. After discussing various other pronouncements, it was concluded that even while directing an inquiry under Section 156(3) CrPC, the Magistrate applies his judicial mind to the complaint and therefore, it would amount to taking cognizance of the matter.

31. Mr Tushar Mehta, learned Additional Solicitor General sought to canvas the view taken in the last two judgments referred to aforesaid to submit that application of mind was necessary to exercise power under Section 156(3) CrPC and that credibility of

information was to be weighed before ordering investigation [Ramdev Food Products (P) Ltd. v. State of Gujarat [Ramdev Food Products (P) Ltd. v. State of Gujarat, (2015) 6 SCC 439 : (2015) 3 SCC (Cri) 192]]. It was, thus, submitted that allegations against a public servant under the PC Act offences are technical in nature and would require a higher evaluation standard and thus the Magistrates ought to apply their mind before ordering investigation against public servant. The consequences of starting investigation under Section 156(3) CrPC, it was submitted, would result in the police registering an FIR (Suresh Chand Jain v. State of M.P. [Suresh Chand Jain v. State of M.P., (2001) 2 SCC 628 : 2001 SCC (Cri) 377] and Mohd. Yousuf v. Afaq Jahan [Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627 : (2006) 1 SCC (Cri) 460]). Thus, a situation may arise where a Magistrate may exercise his power under Section 156(3) CrPC in a routine manner resulting in an FIR being registered against a public servant, who may have no role in the allegation made.

32. We have examined the rival contentions and do find a divergence of opinion, which ought to be settled by a larger Bench. There is no doubt that even at the stage of Section 156(3), while directing an investigation, there has to be an application of mind by the

Magistrate. Thus, it may not be an acceptable proposition to contend that there would be some consequences to follow, were the Magistrate to act in a mechanical and mindless manner. That cannot be the test.

33. The catena of judgments on the issue as to the scope and power of direction by a Magistrate under Chapters XII & XIV is well established. Thus, the question would be whether in cases of the PC Act, a different import has to be read qua the power to be exercised under Section 156(3) CrPC i.e. can it be said that on account of Section 19(1) of the PC Act, the scope of inquiry under Section 156(3) CrPC can be said to be one of taking "cognizance" thereby requiring the prior sanction in case of a public servant? It is trite to say that prior sanction to prosecute a public servant for the offences under the PC Act is a provision contained under Chapter XIV CrPC. Thus, whether such a purport can be imported into Chapter XII CrPC while directing an investigation under Section 156(3) CrPC, merely because a public servant would be involved, would beg an answer.

Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287

20. The learned Magistrate, as we find, while exercising the power under Section 156(3) CrPC has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) CrPC, cannot be marginalised. To understand the real purport of the same, we think it apt to reproduce the said provision:

> **"156.Police officer's power to investigate cognizable case.**—(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
>
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned."

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

Bharat Sanchar Nigam Limited v. Pramod V.Sawat 02019 SCC Online SC 1049) the Apex Court has held as under:

5. Learned counsel for the respondents acknowledged the original appointment of appellants nos. 2 to 4 in Central Civil Services Class-1. It was however submitted that the appellant Corporation was established on 01.10.2000. The appellants nos. 2 to 4 were sent on deputation initially. Option was given for absorption in the appellant Corporation. Appellants nos. 3 and 4 opted for absorption and thus became employees of the appellant Corporation with effect from 01.10.2000 and ceased to be government employees in the Central Civil Services Class-1. Appellant no. 2 appears to have retired from the appellant Corporation while on deputation, but his status is not clear.

8. At the very outset, we are of the opinion that the question for grant of sanction for prosecution under Section 197, Cr.P.C. on the ground of being a 'public servant' is not available to appellants nos. 3 and 4 on account of their ceasing to be employees of the Indian Telecommunication Service after their absorption in the appellant Corporation on 01.10.2000, prior to the complaint. The fact that their past service may count for purposes of pension in case of removal or dismissal by the Corporation or that administrative approval of the concerned ministry may be formally required before any

punitive action will not confer on them the status of 'public servant' under the Cr.P.C.

In a decision reported in (2016) 12 SCC 87, in the case of Devinder Singh v. State of Punjab, the scope of Section 197(1) Cr.P.C. is considered and principles have been summarized regarding sanction:

'17. The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, [Ed.: The matter between two asterisks has been emphasised in B. Saha case, (1979) 4 SCC 177.]

directly and reasonably [Ed.: The matter between two asterisks has been emphasised in B. Saha case, (1979) 4 SCC 177.] connected with his official duty will require sanction for prosecution under the said provision.'

Use of the expression, "official duty" implies 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. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. In P. Arulswami v. State of Madras [P. Arulswami v. State of Madras, AIR 1967 SC 776 : 1967 Cri LJ 665 : (1967) 1 SCR 201] this Court after reviewing the authorities right from the days of Federal Court [Hori Ram Singh v. Crown, 1939 SCC OnLine FC 2 : AIR 1939 FC 43 : (1939) 1 FCR 159] and Privy Council [Phanindra Chandra Neogy v. R., 1948 SCC OnLine PC 73 : (1948-49) 76 IA 10; Gill v. R., 1948 SCC OnLine PC 10 : (1947-48) 75 IA 41; Albert West Meads v. R., 1948 SCC OnLine PC 37 : (1947-48) 75 IA 185] held: (P. Arulswami case [P. Arulswami v. State of Madras, AIR 1967 SC 776 : 1967 Cri LJ 665 : (1967) 1 SCR 201] , AIR p. 778, para 6)

'6. ... It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; 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. 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. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is 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.'

It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty

therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which

may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in Matajog Dobey v. H.C. Bhari [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140 : (1955) 2 SCR 925] thus: (AIR p. 49, paras 17 & 19)

'17. ... The offence alleged to have been committed [by the accused] must have something to do, or must be related in some manner with the discharge of official duty.

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19. ... There must be a [Ed.: The matter between two double asterisks has been emphasised in Budhikota Subbarao case, (1993) 3 SCC 339.] reasonable connection [Ed.: The matter between two double asterisks has been emphasised in Budhikota Subbarao case, (1993) 3 SCC 339.] between the act and the discharge of official duty; the [Ed.: The matter between two double asterisks has been emphasised in Budhikota Subbarao case, (1993) 3 SCC 339.] act must bear

such relation to the duty that the accused could lay a reasonable [claim], but not a pretended or fanciful claim, that he did it in the course of the performance of his duty [Ed.: The matter between two double asterisks has been emphasised in Budhikota Subbarao case, (1993) 3 SCC 339.] .'

If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed." (emphasis supplied)

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 CrPC has to be construed narrowly and in a restricted manner.

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

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

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

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

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

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

duty was. The accused has the right to lead evidence in support of his case on merits.

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

In Rajib Ranjan v. R. Vijaykumar, (2015) 1 SCC 513

14. The question is of the applicability of Section 197 of the Code. The said provision with which we are concerned is reproduced below:

"197.Prosecution of Judges and public servant.—(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction—

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection

with the affairs of the Union, of the Central Government;

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

This provision makes it clear that if any offence is alleged to have been committed by a public servant who cannot be removed from the office except by or with the sanction of the Government, the court is precluded from taking cognizance of such offence except with the previous sanction of the competent authority specified in this provision.

15. The sanction, however, 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 duties". In order to find out as to whether the alleged offence is committed while acting or purporting to act in the discharge of his official duty, the following yardstick is provided by this Court in Budhikota Subbarao [State of Maharashtra v. Budhikota Subbarao,

(1993) 3 SCC 339 : 1993 SCC (Cri) 901 : (1993) 2 SCR 311] in the following words: (SCC p. 347, para 6)

> *"6. ... If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed."*

Birla Corporation Limited vs. Adventz Investment and Holdings Limited and others, the Hon'ble Apex Court has held as under:

24. We have considered the submissions of the learned senior counsel appearing on behalf of the appellant and the respondents and carefully perused the impugned judgment and materials on record.

25. The following questions arise for consideration in these appeals:—

(i) Whether the allegations in the complaint and the statement of the complainant and other materials before the Magistrate were sufficient to constitute prima facie case to justify the satisfaction of the Magistrate in issuing process against the respondents?

26. Complaint filed under Section 200 Cr.P.C. and enquiry contemplated under Section 202 Cr.P.C. and issuance of process:- Under Section 200 of the Criminal Procedure Code, on presentation of the complaint by an individual, the Magistrate is required to examine the complainant and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate has to get himself satisfied that there are sufficient grounds for proceeding against the accused and on such satisfaction, the Magistrate may direct for issuance of process as contemplated under Section 204 Cr.P.C. The purpose of the enquiry under Section 202 Cr.P.C. is to determine whether a prima facie case is made out and whether there is sufficient ground for proceeding against the accused.

27. The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 Cr.P.C. or whether the complaint should be dismissed by resorting to Section 203 Cr.P.C. on the footing that there is no sufficient ground for proceeding on the basis of the statements of the

complainant and of his witnesses, if any. At the stage of enquiry under Section 202 Cr.P.C., the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused.

28. In National Bank of Oman v. Barakara Abdul Aziz (2013) 2 SCC 488, the Supreme Court explained the scope of enquiry and held as under:—

> "9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the

ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have."

29. In Mehmood Ul Rehman v. Khazir Mohammad Tunda (2015) 12 SCC 420, the scope of enquiry under Section 202 Cr.P.C. and the satisfaction of the Magistrate for issuance of process has been considered and held as under:—

"2. Chapter XV Cr.P.C. deals with the further procedure for dealing with "Complaints to Magistrate". Under Section 200 Cr.P.C, the Magistrate, taking cognizance of an offence on a complaint, shall examine upon oath the complainant and the witnesses, if any, present and the substance of such examination should be reduced to writing and the same shall be

signed by the complainant, the witnesses and the Magistrate. Under Section 202 Cr.P.C, the Magistrate, if required, is empowered to either inquire into the case himself or direct an investigation to be made by a competent person "for the purpose of deciding whether or not there is sufficient ground for proceeding". If, after considering the statements recorded under Section 200 Cr.P.C and the result of the inquiry or investigation under Section 202 Cr.P.C, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he should dismiss the complaint, after briefly recording the reasons for doing so.

3. Chapter XVI Cr.P.C deals with "Commencement of Proceedings before Magistrate". If, in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, the Magistrate has to issue process under Section 204(1) Cr.P.C for attendance of the accused."

30. Reiterating the mandatory requirement of application of mind in the process of taking cognizance, in Bhushan Kumar v. State (NCT of Delhi) (2012) 5 SCC 424, it was held as under:—

"11. In Chief Enforcement Officer v. Videocon International Ltd. (2008) 2 SCC 492 (SCC p. 499, para 19) the expression "cognizance" was explained by this Court as "it merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone." It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the

stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code."

31. Under the amended sub-section (1) to Section 202 Cr.P.C., it is obligatory upon the Magistrate that before summoning the accused residing beyond its jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there is sufficient ground for proceeding against the accused.

32. By Cr.P.C. (Amendment) Act, 2005, in Section 202 Cr.P.C. of the Principal Act with effect from 23.06.2006, in sub-section (1), the words "...and shall, in a case where accused is residing at a place beyond the area in which he exercises jurisdiction..." were inserted by Section 19 of the Criminal Procedure Code (Amendment) Act, 2005. In the opinion of the legislature, such amendment was necessary as false complaints are filed against persons residing at far off places in order to harass them. The object of the amendment is to ensure that persons residing at far off places are not harassed by filing false complaints

making it obligatory for the Magistrate to enquire. Notes on Clause 19 reads as under:—

"False complaints are filed against persons residing at far off places simply to harass them. In order to see that the innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

33. Considering the scope of amendment to Section 202 Cr.P.C., in Vijay Dhanuka v. Najima Mamtaj (2014) 14 SCC 638, it was held as under:—

"12. ....The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent

persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

Since the amendment is aimed to prevent persons residing outside the jurisdiction of the court from being harassed, it was reiterated that holding of enquiry is mandatory. The purpose or objective behind the amendment was also considered by this Court in Abhijit Pawar v. Hemant Madhukar Nimbalkar (2017) 3 SCC 528 and National Bank of Oman v. Barakara Abdul Aziz (2013) 2 SCC 488.

34. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in

taking cognizance of the complaint, in Mehmood Ul Rehman, this Court held as under:—

"22. ....the Code of Criminal Procedure requires speaking order to be passed under Section 203 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C., if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C., by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 Cr.P.C., the High Court under Section 482 Cr.PC. is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious

matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

35. In Pepsi Foods Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749, the Supreme Court has held that summoning of an accused in a criminal case is a serious matter and that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and law governing the issue. In para (28), it was held as under:—

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The

Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The principle that summoning an accused in a criminal case is a serious matter and that as a matter of course, the criminal case against a person cannot be set into motion was reiterated in GHCL Employees Stock Option Trust v. India Infoline Limited (2013) 4 SCC 505.

37. At the stage of issuance of process to the accused, the Magistrate is not required to record detailed orders. But based on the allegations made in the complaint or the evidence led in support of the same, the Magistrate is to be prima facie satisfied that there are sufficient grounds for proceeding against the accused. In Jagdish Ram v. State of Rajasthan (2004) 4 SCC 432, it was held as under:—

"10. ....The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the

conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons."

83. It is well settled that the inherent jurisdiction under Section 482 Cr.P.C. is designed to achieve a salutary purpose and that the criminal proceedings ought not to be permitted to degenerate into a weapon of harassment. When the Court is satisfied that the criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in exercise of the inherent powers, such proceedings can be quashed. In Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi (1976) 3 SCC 736, the Supreme Court reviewed the earlier decisions and summarised the principles as to when the issue of process can be quashed and held as under:—

"5. ..... Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry

under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

84. In State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335, the Supreme Court considered the scope of inherent powers of the Court and after referring to

earlier decisions, the Supreme Court enumerated categories of cases by way of illustration where the extraordinary jurisdiction under Article 226 of the Constitution of India can be exercised by the High Court to prevent abuse of process of Court or otherwise to secure ends of justice. It was held that "where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused."

86. In Indian Oil Corpn. v. NEPC India Ltd. (2006) 6 SCC 736, the Supreme Court after observing that there is a growing tendency in business circles to convert powerful civil disputes in criminal cases held as under:—

"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

87. In Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre (1988) 1 SCC 692, it was held that "when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima-facie establish the offence." It was further held that "while considering the matter, the court is to take into consideration any special feature which appear in a particular case showing whether or not it is expedient in the interest of justice to permit a prosecution to continue."

88. The FIR or the criminal proceedings can be quashed if the allegations do not make out a prima-facie case or allegations are so improbable that no prudent person would ever reach a just conclusion that there are sufficient grounds for proceeding against the accused. So far as, the allegation of retention of the documents No. 29 to 54, in our view, no allegation as to when and how the original documents were removed and retained by the respondents. Where on the admitted facts no prima-case case is made out against the accused for proceeding or when the Supreme Court is satisfied that the criminal proceedings amount to abuse of process of court, Supreme Court has the power to quash any judicial proceedings in exercise of

its power under Article 136 of the Constitution of India. In our view, the present case is a fit case for exercising the power in quashing the criminal complaint qua the documents No. 29 to 54 also.

- *Considering the facts and circumstances of the present case and the number of litigations pending between the parties, in our considered view, continuation of the criminal proceedings would be an abuse of the process of the court. The order of the Magistrate dated 08.10.2010 taking cognizance of the offences and the issuance of summons to respondents No. 1 to 16 and the criminal proceedings thereon are liable to be quashed.*

8. The respondent No.2 appearing-in-person has supported the order of the learned Magistrate issuing process to the petitioners by reiterating the grounds urged in the complaint filed before the learned Magistrate. The oral and written submissions of respondent No.2 are summarized as under:

I) On the question of law as to whether Sec.197 of Cr.P.C is applicable to the Petitioners This Criminal Petition was filed only on the ground that the Petitioners are protected under Sec. 197 of the Cr.P.C and that the Magistrate made an

error in taking cognizance of the complaint. The Hon'ble Supreme Court has categorically held that a corporation owned by State or its employees are not protected by Sec.197 of Cr.P.C even if the corporation is a State within the meaning of Article 12 of the Constitution. It is an admitted fact that the Petitioner No.1 is a corporation and the Petitioner No.2 is an employee of the Corporation who is not appointed by the President of India and is removable from his office by his 'Appointing Authority' in accordance with Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003.

The submission of respondent No.2 with reference to the decisions relied on by him are as under:

(A) BSNL Ltd & Otrs Vs. Pramod V Sawant & Anr [Criminal Appeal 503 of 2010 decided on 19 August 2019]

In this case, there were 3 accused who were originally Class I officers of Indian Telecommunication Services appointed by the President. All 3 were sent on deputation and on the forming of the. Corporation on

1.10.2000, the accused no. 3 & 4 opted to be employees of the corporation [para 5 of the order]. The Supreme Court categorically held that the moment they became employees of a corporation they do not get the protection Under Sec. 97 of the Cr.P.C and the Hon'ble Supreme Court relied on its earlier orders.

It is therefore, held that the question of sanction under Section 197, Cr.P.C. with regard to appellants nos.3 and 4 treating them to be 'public servant' simply does not arise because of their absorption in the Corporation.

(B) Punjab State Warehousing Corporation vs, Bhushan Chander and another [Criminal Appeal 159 of 2016 decided on 29 June 2016], reported in (2016) 13 SCC 44

26. In Md. Hadi Raja v. State of Bihar[34} 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.

27. The High Court has not accepted the submission of the Corporation in this regard. We are constrained to note that the decision in Md. Hadi Raja (supra) 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.

28. In view of the aforesaid analysis, the irresistible conclusion is that the respondents are not entitled to have the protective umbrella of Section 197 Cr.P.C

and, therefore, the High Court has erred in setting aside the conviction and sentence on the ground that the trial is vitiated in the absence of sanction.

(C) Mohd. Hadi Raja vs. State of Bihar and another,

(1998) 5 SCC 91

The importance of the public undertaking should not minimized. The government's concern for the smooth functioning of such instrumentality or agency can be well appreciated but on the plain language of Section 197 of the Code of Criminal Procedure, the protection by way of sanction is not available to the officers of the public undertaking because being a juridical person and distinct legal entity such instrumentality stands on a different footing than the government departments.

It is also to be indicated here that in 1973, the concept of instrumentality or agency of state was quite distinct. The interest of the State in such instrumentality or agency was well known. Even then, the legislature, in its wisdom, did not think it necessary to expressly include the officers of such instrumentality or the government company for affording protection by way of sanction under Section 197 Cr.P.C.

It will be appropriate to notice that whenever there was felt need to include other functionaries within the definition of 'public servant', they have been declared to be 'public servants' under several special and local acts.1fthe legislature had intended to include officers of instrumentality or agency for bringing such

officers under the protective umbrella of Section 197 Cr. P. C. It would have done so expressly.

Therefore, it will not be just and proper to bring such persons within the ambit of Section 197 by liberally construing the provisions of Section 197. Such exercise of liberal construction will not be confined to the permissible limit of interpretation of a statute by a court of law but will amount to legislation by Court.

Therefore, in our considered opinion, the protection by way of sanction under Section 197 of the Code of Criminal procedure 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.

II) Malice of Respondent No.2:

The issue has been dealt with in detail in the Reply Affidavit filed by the Respondent No.2. However, the crux of the submissions is that the Respondent No.2 is duty bound to inform the nearest Magistrate I police officer under Sec. 39 of the Cr.P.C. The Respondent No.2

categorically and in no uncertain terms states that this complaint filed is not just about the "commission" of a crime, but is also about the further intention of the Petitioners in committing such crimes. In other words, Mangalore is not yet done, further lives will be sacrificed there because the Petitioners do not comply with the Air Regulations. The logic in doing this is very simple. The cost of prevention is a lot more than the cost of compensation. According to the petitioners, it would cost the State Rs.10,000 crore to extend the runway whereas the entire cost of compensation in Mangalore crash is not even 50 Crores and that too every penny paid by the insurer. The petitioner has Spend 150 Cr on sprucing up the Terminal Building which has nothing to do with the safety of the Passengers, but generates revenue for the state in terms of Rentals and perhaps offer the innocent passengers a wonderful experience with their 'last supper'.

The Respondent No.2 has done everything within their powers to ensure that people are aware and the

Petitioners are not given an opportunity to commit the crime again, but the Respondent No.2 is fighting a system that has not responded to the needs of the time and continues to endanger lives of people which at this point in time is valued much lesser than the commercial profits that could be generated from Rental income of the Terminal.

9. Having heard the submission of learned senior counsels for the petitioners and respondent No.2, appearing-in-person, and on perusal of records, the points that would arise for consideration by this Court would be:

1. Whether the learned Magistrate was justified in taking cognizance only on the ground of deemed sanction?

2. Whether the learned Magistrate was justified in issuing summons to the petitioners by its order dated 19.02.2013 by taking cognizance on the private complaint in PCR No.35/2012 and issuing process against petitioners?

10. Extensive reference to the case law mentioned above would clearly show that the allegations in the complaint and complainant's statement and other materials must show that there are sufficient grounds for proceeding against the accused. In the light of the above principles, let me consider the present case whether the allegations in the complaint and the statement of the complainant and other materials before the Magistrate were sufficient enough to constitute prima-facie case to justify the Magistrate's satisfaction that there were sufficient grounds for proceeding against the respondents-accused and whether there was application of mind by the learned Magistrate in taking cognizance of the offences and issuing process to the respondents.

11. This Court has gone through the impugned order dated 19.02.2013 passed by the learned Magistrate. The said order is as under:

"Heard the complainant. The complainant has filed the present complaint against the Airport Authority of India. The persons who are arrayed as accused are all public servants. Hence sanction under Section 197 of Cr.P.C is required to be obtained. The complainant

has submitted that on 04.07.2012 itself he has applied for sanction before the Govt. of India and reply in that regard was sent to him informing the complainant of the receipt of representations dated 04.07.2012 sent by complainant with assurance to take appropriate action in that regard. But so far have not taken any action by giving sanction to prosecute the case.

The complainant has relied upon ruling reports of Subramanian Swamy Vs. Dr. Manmohan Singh and also Vineet Narian Vs. Union of India reported in (1998) 1 SCC 226 and the guidelines issued by the Central Government, Department of Personnel and Training and the Central Vigilance Commission (CVC), wherein it was observed that in all proposals for sanction placed before any sanctioning authority empowered to grant sanction for the prosecution of a public servant must be decided within a period of 3 months of the receipt of proposals by the concerned authority and if same is not possible within 3 months and extension of 1 month period may be allowed, but the requisition or consultation is to be sent in writing within 3 months and copy of the said representation will be sent to the prosecuting agency or the private complainant to intimate them about the extension of time. It is further observed that "even at the end of the extended period of time limit no decision

is taken, sanction will be deemed to have been granted to the proposal for prosecution".

By taking into consideration, the ruling cited supra and the Guidelines of CVC, this Court is of the opinion that since the complainant has applied for sanction on 04.07.2012 and still there is no order from the Government of India on such application. Since waiting period of 4 months has already been expired, it can be concluded that this very act amounts to deemed sanction.

Further even though the complainant has not produced sanction order as per Section 197 of Cr.P.C., the Court can insist for sanction order at any stage, even at the stage of judgment – but the Court has to look into the aspect whether obtaining of sanction is must in the given case in order to proceed with the case by taking cognizance of the offence.

Hence under the given circumstances, this Court proceeds to pass the following:

ORDER

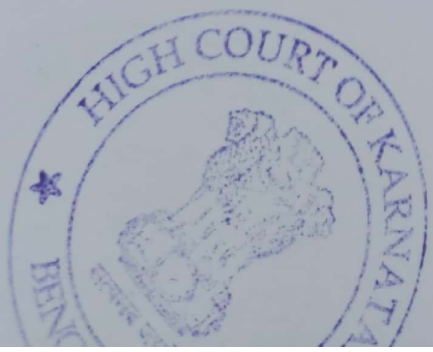
Cognizance is hereby taken for the offence punishable under Section 304(A) IPC. Office to register it in PCR and for S/S."

HIGH COURT OF KARNATAKA

12. A perusal of the order shows that the learned Magistrate relying on the judgment of the Hon'ble Supreme Court in the case of *Subramanian Swamy* has held that there is a deemed sanction. Though Apex Court in paragraph No.56 of the judgment allowed the appeal and set aside the order passed by the Delhi High Court, came to the conclusion that since the Special Judge, CBI had already committed the respondent No.2 in the said case against whom sanction was sought under section 197 of the Code of Criminal Procedure, the Hon'ble Supreme Court gave no directions. However, His Lordship cautioned the Government that whenever such a representation is made by a citizen, keeping in view the earlier decision of the Hon'ble Supreme Court in *Vineet Narain's* case and the guidelines framed by CVC, the sanction application be disposed of. However, in paragraph No.81 had made suggestions for the parliament to consider wherein it is stated that all proposals for sanction must be decided within a period of three months. In *Vineet Narain's* case the Hon'ble Supreme Court was dealing with a case of corruption under the provisions of the prevention of Corruption Act and there was inordinate delay on the part of the

authorities in considering the said application. It is in light of these facts that the Hon'ble Supreme Court thought that time of three months with an extension of one month as stated therein should be sufficient for the competent authority to take decision. In *Swamy's* case it is specifically stated that the application for sanction must be considered in terms of the CVC guidelines. The CVC guidelines itself provide that the said limit of three months would apply in cases of corruption. It is pertinent to add that nowhere does the Hon'ble Supreme Court in either of the judgments laid down that there shall be a deemed sanction. At best if the time period of three or four months expires, the competent authority is answerable to the concerned Court as to why it is delaying decision on the application; but there cannot be a deemed sanction in law.

13. The trial Court has based its decision on the case of the Supreme Court reported in (2012) 3 SCC 64 *Subramanain Swamy* case referred supra. The said case relates to the prosecution under Section 19 of the Prevention of Corruption Act (PC Act), wherein the Supreme Court has referred the guidelines framed by CVC regarding sanction. The guidelines of CVC relate to prosecution



under the PC Act. In para 81 it has opined that the Parliament may consider following guidelines namely, that all proposals for sanction of public servant under Section 19 of PC Act must be decided within three months and an outer limit of four months and at the end of the extended period, the sanction be deemed to have been granted. This is only a proposal. The Parliament has not made any law in this regard. The Supreme Court has not held that till a law is made, guideline issued by it will be the enforceable law. Moreover, as can be seen from Para 80 and 81 of the very judgment, the proposal suggested by the learned judge relates only to restructuring Section 19 of the P.C. Act and not in respect of other matters. In the present case, the allegation is in respect of negligence and offence punishable under Section 304A of IPC, which has nothing to do with the Prevention of Corruption Act.

14. Section 32 of the Airport Authority of India Act, specifies that all officers and employees of Airport Authority of India (AAI) shall be deemed to be public servants within the meaning of Section 21 of IPC.

15. Section 33 of the AAI Act specifies that, no suit, prosecution or any proceeding shall lie against the AAI or any member or any officer or other employee of AAI for anything done in good faith or any damage sustained by any aircraft or vehicle in consequences of any defect in any of airport, civil enclaves, heliports, airstrips, aeronautical communication stations or other things belonging to or under the control of the Authority.

16. In the present case, the complainant himself had submitted the application for sanction to prosecute some of the accused persons, but the said application was not submitted to the concerned authority, as such there was some delay. Thereafter, the complainant-respondent has approached the Magistrate Court for issuance of process on the pretext of deemed sanction, which is not tenable. The Magistrate Court need not act as a sanctioning authority. Section 197 of Cr.P.C. does not provide for any deemed sanction. In the instant case, the sanctioning authority has rejected the application of the complainant seeking sanction to prosecute the accused.

17. The persons who are sought to be prosecuted are also government servants. Therefore, without sanction to prosecute, the complaint was not at all maintainable. Since the sanction has been refused, which has become final, the complaint is liable to be quashed.

18. In view of the facts and circumstances of this case, this Court is of the view that the order dated 19.02.2013 taking cognizance and issuance of summons only on the ground of deemed sanction is not legal and justified. Hence, point No.1 is answered accordingly.

19. As far as point No.2 i.e., regarding legality of the order of the Magistrate is concerned, the learned senior counsels representing the petitioners, relying on various decisions of the Apex Court, have submitted that there is no application of mind by the Magistrate while passing the order for taking cognizance.

20. It is trite law that no formal or detailed order is required to be passed at the stage of issuing process. However, the said order must indicate that the learned Magistrate is satisfied about

the allegations made in the complaint that would constitute an offence and other relevant facts involved in the said case. The cognizance of an offence on the basis of complaint is taken for the purpose of issuing process to the accused, taking cognizance does not involve any formal action and it would occur the moment the Magistrate applies his mind to the suspected commission of an offence.

21. It is pertinent to note that earlier the complaint was filed in respect of the same air crash that took place on 22.05.2010. The police had conducted the investigation and submitted the charge sheet against Pilots, who were responsible for the accident, since both Pilots had expired, the final charge sheet filed by the police was closed as per the order dated 13.02.2012. The order passed by the Magistrate for closure of the charge sheet has not been challenged until this day. The trial Court has failed to take notice of the closure of the earlier final charge sheet produced at Annexure-C in Crl.P.No.3696/2013. The private complaint was filed by respondent No.2 on 06.03.2012 without challenging the earlier

charge sheet. There is no proper explanation for the delay caused in filing the private complaint.

22. In a decision reported in (2010) 8 SCC 775 in the case of *Kishan Singh (dead) through LRs. Vs. Gurpal Singh and others* the Hon'ble Apex Court as observed in para 21 and 22 as under:

> *21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. (Vide Sahib Singh v. State of Haryana.*
>
> *22. In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate*

criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Vide Chandrapal Singh v. Maharaj Singh [(1982) 1 SCC 466 : 1982 SCC (Cri) 249 : AIR 1982 SC 1238] ; State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] ; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : AIR 2000 SC 754] ; and Gorige Pentaiah v. State of A.P.

23. In respect of the air crash on 22.05.2010 at Mangaluru, the Court of Inquiry was conducted. Rule 75 of the Aircraft Rules 1937 empowers the Central Government to hold formal investigation of an accident and empowers the Central Government

to appoint a competent person to hold such investigation, which shall be in open court.

In the year 2017, Rule 75 of the Aircraft Rules 1937 has been repealed and in its place, the Aircraft (Investigation of Accidents and Incidents) Rules, 2017 has been brought into force. In the instant case, earlier Rule 75 of the Aircraft Rules of 1937 applies.

24. A perusal of the records disclose that in the present case immediately after the air crash there was a Court of Inquiry constituted to which reference has been made by the complainant in his complaint. What is more important is that an FIR was registered in relation to this incident whereafter a report under Section 173 of the Code of Criminal Procedure was submitted before the competent Court holding that the responsibility of the accident and the death of all those persons was due to an error on the part of the pilot or co-pilot. And since both were dead no further proceedings could be continued. Therefore, both in the opinion of the investigating and prosecuting agency and the learned Judge, the persons now named in the complaint had no role to play. The learned Judge closed the case in terms of the report filed by

the investigating agency and it was categorically stated that the error was of the pilot and co-pilot and since both of them were dead, no prosecution is possible against them. There was no allegation against the persons named in the complaint. All these facts have not been even considered by the learned Magistrate while taking cognizance.

25. The report on accident of Air India Express Boeing 737-800 Aircraft on 22.05.2010 at Mangaluru disclose that the Court of Inquiry was consisting of experts in the field of airlines headed by Air Marshal and former vice Chief of Indian Air Force. The said committee has held public hearing and on collecting the information from the subject experts, participants invited from several airlines and other concerned departments and the general public, has reported that the cause of accident was Captian's failure to discontinue the 'unstabilised approach' and his persistence in continuing with landing, despite three calls from the First Officer to 'go around' and a number of warnings from EGPWS.

26. Further the Court of Inquiry had reported the contributing factors to the accident as detailed below:

"1. In spite of availability of adequate rest period prior to the flight, the Captain was in prolonged sleep during flight, which could have led to sleep inertia. As a result of relatively short period of time between his awakening and the approach, it possibly led to impaired judgment. This aspect might have got accentuated while flying in the Window of Circadian Low (WOCL).

2. In the absence of Mangalore Area Control Radar (MSSR), due to un-serviceability, the aircraft was given descent at a shorter distance on DME as compared to the normal. However, the flight crew did not plan the descent profile properly, resulting in remaining high on approach.

3. Probably in view of ambiguity in various instructions empowering the 'co-pilot' to initiate a 'go around', the First Officer gave repeated calls to this effect, but did not take over the controls to actually discontinue the ill-fated approach."

27. The said report nowhere indicates that the petitioners, who have been arraigned as accused, are responsible for the accident. It is pertinent to note that report of the Court of Inquiry was challenged before the Supreme Court in W.P.(Civil) No(s).749/2013 by the respondent No.2-Yeshwant Shenoy

(complainant in P.C.No.35/2012). The said writ petition was disposed of with a direction that a copy of this petition be placed before the learned Secretary, Ministry of Civil Aviation, Government of India, as a representation, which may refer the matter to an expert committee to examine and find out as to whether any suggestion made in this petition is worth acceptance and implementation, and if so, may implement the same. The result of the representation be informed to the present petitioner by the concerned authority. Thereafter, respondent No.2-Yeshwanth Shenoy, advocate, had also participated in the proceedings held by the Court of Inquiry and also in the meeting held on a "Matter related to Mangalore Investigation" under the Chairmanship of Secretary, Ministry of Civil Aviation on 22.03.2012 at Rajiv Gandhi Bhawan, New Delhi. The complainant has been all along part of the proceedings, but all these aspects have not been considered by the learned Magistrate.

28. In a decision reported in (2004) 9 SCC 362 in the case of *N D Jayal and another vs. Union of India and others*, the Hon'ble Apex Court in paragraph Nos.20 and 21 has observed as under:

20. This Court cannot sit in judgment over the cutting edge of scientific analysis relating to the safety of any project. Experts in science may themselves differ in their opinions while taking decisions on matters related to safety and allied aspects. The opposing viewpoints of the experts will also have to be given due consideration after full application of mind. When the Government or the authorities concerned after due consideration of all viewpoints and full application of mind took a decision, then it is not appropriate for the court to interfere. Such matters must be left to the mature wisdom of the Government or the implementing agency. It is their forte. In such cases, if the situation demands, the courts should take only a detached decision based on the pattern of the well-settled principles of administrative law. If any such decision is based on irrelevant consideration or non-consideration of material or is thoroughly arbitrary, then the court will get in the way. Here the only point to consider is whether the decision-making agency took a well-informed decision or not. If the answer is "yes", then there is no need to interfere. The consideration in such cases is in the process of decision and not in its merits.

29. In another decision reported in (2013) 6 SCC 620 in the case of *G Sundarrajan vs. Union of India and others*, the Hon'ble Apex Court has observed in paragraph Nos.209 and 210 as under:

> *209. A Constitution Bench of this Court in University of Mysore v. C.D. Govinda Rao [AIR 1965 SC 491] , held that, normally, the court should be slow to interfere with the opinion expressed by the experts and it would normally be wise and safe for the courts to leave the decisions to experts who are more familiar with the problems which they face than the courts generally can be, which has been the consistent view taken by this Court. Reference may be made to the judgments of this Court in State of Bihar v. Asis Kumar Mukherjee [(1975) 3 SCC 602 : 1975 SCC (L&S) 51], Dalpat Abasaheb Solunke v. B.S. Mahajan [(1990) 1 SCC 305 : 1990 SCC (L&S) 80 : (1991) 16 ATC 528], Central Areca Nut & Cocoa Mktg. & Processing Coop. Ltd. v. State of Karnataka [(1997) 8 SCC 31] , Dental Council of India v. Subharti K.K.B. Charitable Trust [(2001) 5 SCC 486], Basavaiah v. H.L. Ramesh [(2010) 8 SCC 372 : (2010) 2 SCC (L&S) 640] and Avishek Goenka v. Union of India [(2012) 5 SCC 275] . In Woon Tan Kan v. Asian Rare Earth Sdn. Bhd. [(1992) 4 CLJ 2207 (Malaysia)] , the Supreme Court of Malaysia vide its judgment dated 23-12-1992 examined the effect of low-level radioactive waste on the health of the population. The Supreme Court upheld the plea of the company, placing reliance on the expert opinion expressed by the Atomic Energy Licensing Board (AELB) and took the view that since the company has been operating under the licence granted by AELB, an expert body, it will be taken that the expert body had the expertise to speak on the radiation level of the radioactive waste, on the health of the population.*
>
> *210. We have noticed that, so far as this case is concerned, from the safety and security point of view of*

life and property, on environment and all that related aspects, all the expert bodies are unanimous in their opinion that KKNPP has fully satisfied all safety norms to safeguard the human life, property and environment which, we are sure, will allay the fears and apprehensions expressed by the people living in and around Kudankulam. The Court, in our view, cannot sit in judgment on the views expressed by the technical and scientific bodies in setting up of KKNPP Plant at Kudankulam and on its safety and security.

30. In the present case, the learned Magistrate has not at all considered the report submitted by the Court of Inquiry. The conclusion drawn by the Court of Inquiry should not have been overlooked by the learned Magistrate.

31. In view of the ratio laid down in the aforesaid decisions, the Magistrate was bound to consider the Court of Inquiry report before issuance of process.

32. Learned senior counsel has cited a unreported judgment of Kerala High Court dated 16.11.2020 passed in W.P.(C) No.24216/2020, which pertains to Public Interest Litigation (PIL)/writ of mandamus, filed by respondent No.2-Mr.Yeshwant Shenoy, for appointing committee of retired judges to conduct inquiry in respect of the air crash that occurred on 07.08.2020 at

Calicut International Airport. Respondent No.2 has raised several objections regarding the Court of inquiry conducted by the aircraft accident investigation bureau, which is competent authority to conduct the investigation. In the said decision, the Division Bench of Kerala High Court, has observed that most of the aspects putforth by the petitioner in the writ petition are all technical aspects with regard to safety precautions that are to be undertaken by the respective stakeholders so as to prevent the accidents and has further held in paragraph No.24 as under:

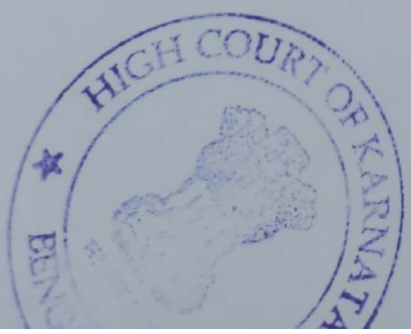
> *"24. By discussing the above Rules, we intend to say that there is a clear cut procedure prescribed to deal with the investigation of an aircraft accident as per Rules, 2017. It is an admitted fact that immediately after the accident, in terms of Rules, 2017, the Aircraft Accident Investigation Bureau had appointed investigators to look into the matter. The Rules extracted above would make it clear that a structured procedure is contemplated with respect to the formulation of investigators and to tackle the situations to incorporate representatives as per the request of the stakeholders. Therefore, what we propose to say is that when there is a procedure prescribed under law and the investigation is going on, we do not think, it is right on*

the part of a writ court to interfere with the same and order a parallel investigation by appointing a former Judge of the Supreme Court or of any High Court. True, the Central Government is vested with powers to conduct a formal investigation in accordance with the powers conferred under Rule 12 of Rules 2017, but we do not think that it is a mandatory requirement whereas the investigation by the AAIB under Rule 5 is a mandatory requirement. In short, we have no hesitation to say that the writ petition filed by the petitioner is a premature one, since the investigation is going on by the investigators appointed by appropriate statutory authority. The only contention of the petitioner with respect to the appointment of the investigators is that one of the members is not competent or a fit person due to some earlier incident. Now, in spite of making allegations, the said person is not made a party in the said writ petition and no documents are produced to substantiate the allegations. Moreover, the entire matter in respect of the investigation is under the control of the Government of India and the appropriate statutory authorities and if there are any shortcomings in the matter of enquiry, it is for the Government of India or the authorities to take appropriate decisions at the appropriate time."

With the aforesaid observation, the writ petition filed by the respondent No.2 is dismissed.

33. In view of the aforesaid decision, it is evident that the entire matter of investigation by the Court of Inquiry is under the control of Government of India and other appropriate statutory authorities and it is for the Union Government to take appropriate deicison in the matters of reports submitted by the Court of Inquiry regarding air crash.

34. The trial Court has failed to consider the closure of the earlier charge sheet i.e., on the reason that the pilots, who have been arraigned as accused, have expired in the air crash and also the report of Court of Inquiry. In view of the amended sub-section (1) of Section 202 Cr.P.C., it is obligatory upon the Magistrate that before summoning the accused, residing beyond his jurisdiction, he shall enquire into the case himself or direct investigation to be made by the Police Officer or by such other person for finding out whether or not there was sufficient ground for proceeding against the accused. In the case on hand, no such attempt is done by the Magistrate.



35. For the foregoing reasons, the order of the Magistrate for taking cognizance and issuance of process only on the point of deemed sanction is not tenable and there are no valid grounds to entertain the private complaint. Accordingly, I proceed to pass the following:

ORDER

i. Crl.P.3696/2013 C/w Crl.P.5696/2013 are allowed.

ii. The order dated 19.02.2013 passed in Private Complaint No.35/2012 on the file of JMFC-II Court, Mangaluru, for taking cognizance and issuance of process is set-aside. The private complaint in P.C.No.35/2012 is hereby quashed.

HIGH COURT OF KARNATAKA

BSR

Sd/-
JUDGE

'TRUE COPY'
Section Officer 5.3.24
High Court of Karnataka
Bengaluru - 560 001

a) The date on which the application was made 5/3/24
b) The date on which charges and additional Charges if any are called for —
c) The dated on which charges and additional Charges, if any are deposited/Paid 5/3/24
d) The date on which the copy is ready 5/3/24
e) The date of notifying that the copy is ready for delivery 10/3/24
f) The date on which the applicant is required to appear to receive
g) The date on which the copy is delivered to