

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

CRL.REV.PET NO. 509 OF 2012

AGAINST THE COMMON ORDER IN CRL.M.P.NO.28/09 AND

CRL.M.P.NO.29/09 IN CC 1/2008 IN THE COURT OF SPECIAL JUDGE

FOR CBI CASES, LAKSHADWEEP

REVISION PETITIONER/RESPONDENT:

STATE

REP. BY CBI/SPE, COCHIN BY INSPECTOR OF POLICE.

BY ADV SHRI.P.VIJAYAKUMAR, ASG OF INDIA

RESPONDENT/PETITIONER/ACCUSED NO. 8:

SYED SHAIKOYA

S/O. LATE M.K. ATTAKOYA, POKKILAKAM HOUSE,
KALPENI ISLAND, KOCHI.

BY ADVS.

SRI.GLEN ANTONY

SRI.P.SANJAY

SMT.M.VANAJA

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 11.08.2021, ALONG WITH Crl.Rev.Pet.532/2012,
THE COURT ON 01.09.2021 DELIVERED THE FOLLOWING:

CrI.R.P.Nos.509/2012
&532/2012

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

CRL.REV.PET NO. 532 OF 2012

AGAINST THE COMMON ORDER IN CRL.M.P.NO.28/09 AND
CRL.M.P.NO.29/09 IN CC 1/2008 IN THE COURT OF SPECIAL JUDGE
FOR CBI CASES, LAKSHADWEEP

REVISION PETITIONER/RESPONDENT:

STATE REPRESENTED BY CBI/SPE,
COCHIN BY INSPECTOR OF POLICE

BY ADV SHRI.P.VIJAYAKUMAR, ASG OF INDIA

RESPONDENT/PETITIONER/ACCUSED NO.8:

K.R. VENKITACHALAM
OFFICER ON SPECIAL DUTY (EDUCTION) (RETD.)
LAKSHADWEEP ADMINISTRATION OFFICE, COCHIN
BY ADVS.
GLEN ANTONY
P.SANJAY
M.VANAJA

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 11.08.2021, ALONG WITH CrI.Rev.Pet.509/2012,
THE COURT ON 01.09.2021 DELIVERED THE FOLLOWING:

Crl.R.P.Nos.509/2012
&532/2012

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"CR"

R.NARAYANA PISHARADI, J

Crl.R.P.Nos.509 of 2012

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532 of 2012

Dated this the 1st day of September, 2021

ORDER

These revision petitions are filed by the Central Bureau of Investigation (CBI) challenging the order dated 08.11.2011 passed by the Court of the Special Judge for CBI Cases, Lakshadweep by which it allowed the applications for discharge filed under Section 239 of the Code of Criminal Procedure, 1973 (for short 'the Code') by accused 4 and 8 in the case C.C.No.1/2008 on the file of that Court.

2. The respondent in Crl.R.P.No.509/2012 is Accused No.8 and the respondent in Crl.R.P.No.532/2012 is Accused No.4 in the above case.

3. There are altogether nine accused in the case. The offences alleged against them are punishable under Sections 7, 12 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act') and also under Sections 468, 471, 420 and 120B of the Indian Penal Code.

4. The prosecution case, in short, is as follows: The Directorate of Education of the Union Territory of Lakshadweep had directed to supply, free of cost, ready-made uniforms to the school children for the academic year 2005-06. A Uniform Tender Evaluation, Sample Selection and Procurement Committee, consisting of five persons, was formed for the evaluation and finalisation of the tenders submitted for supply of the ready-made uniforms. Pursuant to a conspiracy hatched by the members of the aforesaid committee with one Nagendran, who later turned to be an approver, sub-standard uniforms were purchased, violating the tender conditions and by making false and forged entries on record. The aforesaid persons had conspired with the other accused, who were private persons doing textile business and another a tailoring instructor, to obtain

wrongful gain for themselves in purchasing sub-standard materials and causing wrongful loss to the Lakshadweep Administration.

5. Accused 4 and 8, along with some other accused, filed applications for discharge as Crl.M.P.Nos.28/2009 and 29/2009 before the Special Court under Section 239 of the Code. The aforesaid applications were dismissed by the Special Court by order dated 12.07.2010. Accused 4 and 8 challenged that order before this Court in Crl.R.P. No.2457/2010. As per the order dated 22.09.2011 in Crl.R.P.No.2457/2010, this Court partly allowed the revision petition and directed the Special Court to decide the question of sanction under Section 197 of the Code which was raised by accused 4 and 8.

6. Thereafter, the Special Court considered afresh the applications for discharge filed by accused 4 and 8, in the light of the contention raised by them that sanction under Section 197 of the Code was necessary to prosecute them. The Special Court, by a common order dated 08.11.2011, found that the prosecution against accused 4 and 8 is bad for want of sanction

under Section 197 of the Code and discharged them. The CBI has filed these revision petitions challenging the aforesaid order passed by the Special Court.

7. Heard learned Central Government Standing Counsel who appeared for the CBI and the learned counsel for the respondents in the revision petitions.

8. Section 197(1) of the Code states that, 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 of the Central Government or the State Government, as the case may be.

9. In **Amrik Singh v. State of Pepsu: AIR 1955 SC 309**, it has been held as follows:

"The result of the authorities may thus be summed up : It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1), Criminal P.C.;

nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution. In our judgment, even when the charge is one of misappropriation by a public servant, whether sanction is required under Section 197(1) will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required".

(emphasis supplied)

10. Regarding the scope of Section 197(1) of the Code, a Constitution Bench of the Apex Court, in **Matajog Dobey v. H.C. Bhari : AIR 1956 SC 44**, has held as follows:

"The result of the foregoing discussion is this : There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty".

11. In **Pukhraj v. State of Rajasthan : AIR 1973 SC 2591**, it has been held as follows:

"While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in

terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in the execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "cloak of office" and "professed exercise of office" may not always be appropriate to describe or delimit the scope of the section. An act merely because it was done negligently does not cease to be one done or

purporting to be done in execution of a duty”.

12. In **Sankaran Moitra v. Sadhna Das : AIR 2006 SC 1599**, it has been held as follows:

“The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted”.

13. In **Devinder Singh v. State of Punjab : AIR 2016 SC 2090**, the Supreme Court summarazied the principles with regard to the applicability of Section 197 of the Code as follows:

“The principles emerging from the aforesaid decisions are summarised hereunder:

I. 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.

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

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

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

V. 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.

VI. 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.

VII. 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.

VIII. 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.

IX. 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."

14. In **D.Devaraja v. Owais Sabeer Hussain : AIR 2020 SC 3292**, after an elaborate discussion of the question, it was held as follows:

"To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty".

15. Accused No.4 was a person working as officer on special duty in the Education Department. Accused No.8 was serving as the Secretary to the Administrator, Union Territory of Lakshadweep, Cochin office. They were members of the Uniform Inspection and Quality Inspection and Acceptance Committee.

They happened to be members of that committee by virtue of the offices held by them. Accused No.9 was the technical member of the committee. The sum and substance of the allegation against accused 4 and 8 is that they blindly accepted the certificate issued by Accused No.9 without conducting inspection of the uniform materials and consequently, sub-standard materials happened to be purchased.

16. The Special Court considered the role of the above accused in the commission of the offences and stated in the impugned order as follows:

"As rightly pointed out by the counsel, both the petitioners had a busy schedule in Kochi in the respective positions. Both of them did not have expertise in the matter of quality control or checking the standards of stitching or clothes supplied. At the most, they can be blamed only for the omissions in not insisting meetings of the committee. In all probability they might have gone by the certificates issued by the 9th accused who was the technical member in the committee. In that way, they can be blamed for non feasance, at the most. But it cannot be said that such acts or omissions had no reasonable connection with the

performance of the official duty expected of them.”

The Special Court then summed up as follows:

“11. To sum up, the petitioners are being prosecuted for the acts or omissions committed by them as public servants. The said acts or omissions were reasonably connected with the discharge of their official duties. The said acts or neglects fall within the scope and range of official duties performed by them. Having regard to the quality of the act also, it appears that they are entitled to get the statutory protection. Moreover, prosecution was also fully aware of the need for getting sanction. Still the petitioners are being proceeded against without sanction, for the reason that they have since retired from service. Such an assumption is incorrect. For all these reasons, the prosecution of the petitioners is hit by section 197 Cr.P.C so that they are entitled to be discharged under Section 239 of the Criminal Procedure Code. Point found accordingly.”

17. Having considered the role of accused 4 and 8 in the transaction, the Special Court has taken a reasonable view that the acts or omissions on their part fall within the scope and range of the official duties discharged by them. Negligence on the part

of these accused, who were not experts in the field, in accepting the certificate issued by the technical member of the committee would not take them out of the protection under Section 197(1) of the Code, which is otherwise available to them. The prosecution has no case that accused 4 and 8 were experts in the field to assess the quality of dress materials.

18. The following observations made by the Apex Court in **State of Madhya Pradesh v. Sheetla Sahai : (2009) 8 SCC 617**, are relevant in this context.

"Some of the respondents, as noticed hereinbefore, were required to render their individual opinion required by their superiors. They were members of the Committee constituted by the authorities, viz., the Minister or the Secretary. At that stage, it was not possible for them to refuse to be a Member of the Committee and/ or not to render any opinion at all when they were asked to perform their duties. They were required to do the same and, thus, there cannot be any doubt whatsoever that each one of the respondent Nos. 1 to 7 was performing his official duties".

(emphasis supplied)

19. In such a situation, when accused 4 and 8 agreed with the report given by the expert member, it cannot be found that their act had no reasonable connection with their official duties. Therefore, it was necessary to obtain sanction under Section 197 of the Code for prosecution against them. Cognizance of the offences taken against them, without such sanction, was bad in law.

20. The discussion above would show that there is no merit in these revision petitions and they are liable to be dismissed.

Consequently, the revision petitions are dismissed.

(sd/-) **R.NARAYANA PISHARADI, JUDGE**

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Crl.R.P.Nos.509/2012
&532/2012

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APPENDIX IN CRL.R.P.NO.509 OF 2012

PETITIONER'S ANNEXURES:

ANNEXURE A1 : CERTIFIED COPY OF COMMON ORDER PASSED IN
CRL.M.P.28/09 AND CRL.M.P.29/09 IN C.C.1/08 IN THE COURT OF SPECIAL
JUDGE FOR CBI CASES, LAKSHADWEEP.

RESPONDENT'S ANNEXURES:

NIL

Crl.R.P.Nos.509/2012
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APPENDIX IN CRL.R.P.NO.532 OF 2012

PETITIONER'S ANNEXURES:

ANNEXURE_A1 : CERTIFIED COPY OF COMMON ORDER PASSED IN
CRL.M.P.28/09 AND CRL.M.P.29/09 IN C.C.1/08 IN THE COURT OF SPECIAL
JUDGE FOR CBI CASES, LAKSHADWEEP.

RESPONDENT'S ANNEXURES:

NIL

TRUE COPY

PS TO JUDGE