

**Court No. - 93**

**Case :-** APPLICATION U/S 482 No. - 21858 of 2019

**Applicant :-** Ved Prakash Govil

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Jainendra Kumar Mishra

**Counsel for Opposite Party :-** G.A., Nawal Kishor Mishra, Upendra Vikram Singh

**Hon'ble Arun Kumar Singh Deshwal, J.**

1. Heard Sri Upendra Vikram Singh, learned counsel for the applicant and Sri Uday Bhan, learned AGA for the State.
2. The present 482 Cr.P.C. application has been filed to quash the summoning order dated 31.05.2014, under Section-465 IPC, Police Station-Chamanganj, District-Kanpur Nagar and the entire proceeding of Complaint Case No.356 of 2014 (Om Prakash Agrawal Vs. V.P. Govil and others), pending in the court of MM-IV, Kanpur Nagar.
3. Learned counsel for the applicant submits that the applicant had retired as an Executive Engineer in 2010, and after his retirement, the impugned complaint was filed In 2014, the summoning order was passed on 15.04.2014. Thereafter, the applicant, after obtaining bail, filed an application dated 19.06.2015 that complaint itself is barred for want of proper sanction u/s 197 Cr.P.C., which was heard on 01.09.2015, but disposal of same was postponed till the evidence stage. Now, after almost four years, the applicant has challenged the impugned criminal proceeding on the ground that prior sanction u/s 197 IPC was not taken before lodging the complaint above or before taking cognizance of

the aforesaid complaint.

4. Learned counsel for the applicant submits that the allegation in the complaint against the applicant is that while discharging his duty as an Executive Engineer, he had produced a forged disconnection slip dated 03.11.2008. Therefore, without prior sanction u/s 197 Cr.P.C., the proceeding of the complaint case cannot be initiated. In support of his contention, learned counsel for the applicant has also relied upon the judgement of a coordinate Bench of this Court passed in **APPLICATION U/S 482 No. - 17421 of 2011 (Ayush Kumar And Others Vs. State of U.P. And Another)** vide order dated **10.04.2019**, as well as the judgement of the Apex Court in **Criminal Appeal No.238 of 2019 (Professor R.K. Vijayasarathy & Anr. Vs. Sudha Seetharam & Anr.)** decided on **15.02.2019** as well as the judgement of **Punjab State Warehousing Corporation Vs. Bhushan Chander And Another** reported in **2016 (13) SCC 44**.

5. Per contra, learned counsel for opposite party no.2 has submitted that once the applicant's application for dropping the proceeding on the ground want of prior sanction u/s 197 Cr.P.C. was rejected, that order has become final. The applicant cannot challenge the impugned proceeding on the same ground.

6. Learned AGA also adopted the argument of opposite party no.2 and furthermore submitted that the impugned proceeding itself is at the evidence stage, and the applicant also obtained bail in the impugned proceeding, he can raise this objection at the appropriate stage.

7. After considering the submission of the parties and on perusal of the record, it is clear that the applicant moved an application for dropping the proceeding on the ground that prior sanction u/s 197 Cr.P.C. was not obtained before filing the complaint. Though that application was heard by the court on 01.09.2015, but disposal of same was adjourned on the grounds of whether applicant's act of producing the allegedly forged disconnection slip dated 03.11.2008 is in the discharge of his official duty, which can be decided on the basis of evidence. The order sheet shows that this application is still pending.

8. Hon'ble Supreme Court in the case of **State of Orissa Vs. Ganesh Chandra Jew** reported in **2004 (8) SCC 40** observed that protection u/s 197 Cr.P.C. had certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing objectionable acts. The question is not as to the nature of the offence such as whether the alleged offence contained an element that necessarily depends upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Paragraph no.7 of the above judgement is being quoted as under:

*"7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without*

reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

9. Similarly, in the case of **Shambhoo Nath Mishra Vs. State of U.P. & Others** reported in **1997 (5) SCC 326**

observed that whether a public servant who allegedly commits the offence of fabrication of records or misappropriation of public funds can be said to have acted in the discharge of his official duty and further observed that it is not the official duty to fabricate records or to misappropriate public funds. Paragraph no.5 of the judgement above are being quoted as under:

*"5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained."*

10. Similarly, the Hon'ble Supreme Court, in the case of **Shadakshari Vs. State of Karnataka & Another in Criminal Appeal No.256 of 2024** decided on **07.01.2024**. Hon'ble Supreme Court observed in paragraph no.25 that **the question of whether respondent no.2 was involved in fabricating official documents by misusing his official position as a public servant is a matter of trial** and further observed that manufacturing of such documents or fabrication of records cannot be a part of the official duty of a public servant. Paragraph no.25 of the judgement above are being quoted as under:

*"25. The question whether respondent No.2 was involved in*

*fabricating official documents by misusing his official position as a public servant is a matter of trial. Certainly, a view can be taken that manufacturing of such documents or fabrication of records cannot be a part of the official duty of a public servant. If that be the position, the High Court was not justified in quashing the complaint as well as the chargesheet in its entirety, more so when there are two other accused persons besides respondent No.2.*

*There is another aspect of the matter. Respondent No.2 had unsuccessfully challenged the complaint in an earlier proceeding under Section 482 Cr.PC. Though liberty was granted by the High Court to respondent No.2 to challenge any adverse report if filed subsequent to the lodging of the complaint, instead of confining the challenge to the chargesheet, respondent No.2 also assailed the complaint as well which he could not have done."*

11. The legal position as mentioned above is clear that whether the particular act of fabricating official documents is a part of the official duty of a public servant or not, is a matter of trial and the proceeding cannot be quashed on that basis.

12. So far as the judgement of **Punjab State Warehousing Corporation (supra)** relied upon by the learned counsel for the applicant is concerned, in that judgement Hon'ble Supreme Court observed that there has to be the reasonable connection between the omission or commission and discharge of official duty or the act committed was under the colour of office held by the officials. If the act of omission or commission aligns to the discharge of official duty, then the question of invoking Section-197 Cr.P.C. does not arise. This legal position is correct and does not support the applicant because it is yet to be decided whether the act of producing a forged disconnection certificate on the part of the applicant can be said to be the act in the discharge of the official duty, which can be considered after adducing the evidence during the trial. Paragraph no.20 of the above judgement is being quoted as below:

"20. A survey of the precedents makes it absolutely clear that there has to be a reasonable connection between the omission or commission and the discharge of official duty or the act committed was under the colour of the office held by the official. If the act(s), omission or commission of which is totally alien to the discharge of the official duty, question of invoking Section 197 CrPC does not arise. We have already reproduced few passages from the impugned order from which it is discernible that to arrive at the said conclusion the learned Single Judge has placed reliance on the authority in B. Saha [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] . The conclusion is based on the assumption that the allegation is that while being a public servant, the alleged criminal breach of trust was committed while he was in public service. Perhaps the learned Judge has kept in his mind some kind of concept relating to dereliction of duty. The issue was basically entrustment and missing of the entrusted items. There is no dispute that the prosecution had to prove the case. But the public servant cannot put forth a plea that he was doing the whole act as a public servant. Therefore, it is extremely difficult to appreciate the reasoning of the High Court. As is noticeable he has observed that under normal circumstances the offences under Sections 467, 468 and 471 IPC may be of such nature that obtaining of sanction under Section 197 CrPC is not necessary but when the said offences are interlinked with an offence under Section 409 IPC sanction under Section 197 for launching the prosecution for the offence under Section 409 is a condition precedent. The approach and the analysis are absolutely fallacious. We are afraid, though the High Court has referred to all the relevant decisions in the field, yet, it has erroneously applied the principle in an absolute fallacious manner. No official can put forth a claim that breach of trust is connected with his official duty. Be it noted the three-Judge Bench in B. Saha [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] has distinguished Shreekantiah Ramayya Munipalli [Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287 : 1955 Cri LJ 857] keeping in view the facts of the case. It had also treated the ratio in Amrik Singh [Amrik Singh v. State of Pepsu, AIR 1955 SC 309 : 1955 Cri LJ 865] to be confined to its own peculiar facts. The test to be applied, is as has been stated by Chandrasekhara Aiyar, J. in the Constitution Bench in Matajog Dobey [Matajog Dobey v. H.C.

*Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140] which we have reproduced hereinbefore. The three-Judge Bench in B. Saha [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] applied the test laid down in Gill case [Gill v. R., (1948) 10 FCR 19 : AIR 1948 PC 128 : (1947-48) 75 IA 41 : 1948 SCC OnLine PC 10] wherein Lord Simonds has reiterated that the test may well be whether the public servant, if challenged, can reasonably claim, that what he does, he does in virtue of his office."*

13. So far as the judgement of **Ayush Kumar And Others (supra)**, relied upon by the applicant is concerned, in that case, the dispute was only about incorrectly mentioning the C.T. ratio of metering cubicle during the check-in drive. Subsequently, C.T. ratio of the metering cubical was corrected from 20/5 to 30/5, the applicant did not dispute the facts in that case. Therefore, from the evidence available before the court, it was undisputed that the preparation of sealing certificate mentioning the C.T. ratio metering cubical was in discharge of official duty, therefore, the Hon'ble Court on being satisfied that the act of the officer was in discharge of official duty; consequently, he is entitled to protection u/s 197 IPC but in the present case, the dispute is yet to be ascertained whether the preparation and producing the forged disconnection slip on the part of the applicant can be said to be the preparation of documents in the discharge of official duty; therefore this judgement also does not help the applicant.

14. So far as the judgement of **Professor R.K. Vijayasathy (supra)**, relied upon by the applicant is concerned, that judgement does not apply in the present case because in that case, the dispute was whether the civil dispute had been converted into criminal dispute.



15. This court holds on the basis of the legal position discussed above that whenever there is a slight doubt whether the act or omission on the part of a public servant was in discharge of his official duty or not. Unless that issue was decided on the basis of evidence during trial, the criminal proceeding cannot be quashed in the exercise of power u/s 482 Cr.P.C., mainly because a person claiming himself to be a public servant alleges that his act was in discharge of his official duty. Protection u/s 197 IPC is given to protect the public servant who bonafide performed any act in the discharge of his official duty not for all the act whether that act was part or not his official duty as there are number of acts which has been declared by the Apex Court which cannot be said to be part of the official duty like fabricating the document or misappropriation of funds.

16. From the perusal of the record, it appears that against the entry in 2009 in the register of the electricity department, the alleged disconnection slip, which was produced as a defence by the applicant, was itself prepared in 2008. Therefore, prima facie, the accused's act cannot be said to be in discharge of his official duty. Even otherwise, it is a matter of evidence. This issue can be decided during the trial whether the applicant, while producing the forged disconnection slip, was performing his duty or it was beyond his duty to produce the forged disconnection slip as a defence in the proceeding before the consumer forum. The issue is still open for the applicant to take this defence during the trial. Therefore, this court **does not find any good ground for quashing the impugned proceeding.**

17. From the perusal of the order sheet, it appears that this

case has been pending since 2014, therefore, it would be appropriate to direct the court below to conclude the proceeding of **Complaint Case No.356 of 2014 (Om Prakash Agrawal Vs. V.P. Govil and others)**, under **Section-465 IPC, Police Station-Chamanganj, District-Kanpur Nagar, pending in the court of MM-IV, Kanpur Nagar**, as expeditiously as possible, preferably within one year from today.

18. Accordingly, the present application is **rejected**, with the aforesaid observation.

**Order Date :- 24.1.2024**

**\*S.Chaurasia\***