



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 207 OF 2026

1. Ms. Saira Shaikh

Daughter of Mr. Hussain F. Shaikh,

Occupation: Housewife,

R/o House No. 7/140, Bhatlem,

Near Sati Temple, Panaji, Goa.

Currently in UK with spouse

Mr. Imran Shaikh.

Versus

... Applicant

The State of Goa,

(through CBI/ACB/Goa),

Bungalow F-1, Type VI Quarters,

GMC Quarters, Bambolim, Goa.

... Respondent

Mr. Vilas P. Thali with Mr. Rajdeep Prabhugaonker and Mr. Rasik Borkar, Advocates for the Applicant.

Ms. Asha Desai, Special Public Prosecutor with Ms. S. Dessai, Advocate for CBI.

WITH

CRIMINAL REVISION APPLICATION NO. 208 OF 2026

Charudatta Ozarkar

S/o. Madhukar Ozarkar

Aged about 50 years,

Occ:-Business
Indian Inhabitant,
R/at. CPWD Quarters No.9,
Type 2, M Ukundnagar ,Pune

... Applicant

Versus

The State of Maharashtra,
To be served
Through CBI/ ACB/Goa,
Through Public Prosecutor,
High Court, Goa

... Respondent

Mr. Vikash Sonwakshi (through V.C.), Advocate for the
Applicant.

WITH
CRIMINAL REVISION APPLICATION NO. 8 OF 2024

Moham Kapse,
Aged 63,
Residing at 15/302,
Hill View Society,
Megathane, Borivali (E)
Mumbai, Maharashtra 400066.

... Applicant

Versus

The State of Goa
Through CBI/ACB, Goa.
Office of the Supt. Of Police, CBI,
Anti-Corruption Branch,
Bungalow No. F-1, Type-VI,

GMC Quarters,
National Highway NH-17,
Bambolim, Goa-403202.

... Respondent

Mr. H. G. Dharmadhikari with Ms. Marilyn Alvares and Ms
Lalita Phadke, Advocates for the Applicant.

Ms. Asha Desai, Special Public Prosecutor with Ms. S. Dessai,
Advocate for CBI.

WITH
CRIMINAL REVISION APPLICATION NO. 209 OF 2026

State
Thr. CBI, ACB, Goa,
Anti Corruption Branch,
Bungalow No. F-1,
Type VI, GMC Quarters,
NH-17, Bambolim,
Goa-403202.

...Applicant

Versus

1. Mr. Mohan Kapse,
Resident of 15/302,
Hill View Society,
Megathane, Borivali (E),
Mumbai.

2. Mr. Charudatta Ozarkar,
Resident of CPWD Quarters No. 9,

Type 2 Quarter,
Mukundnagar, Pune.

3. Ms. Nagma Shaikh,
Resident of House No. 551,
Dr. Gama Pinto Road,
Panaji, Goa.

4. Ms. Saira Shaikh,
Resident of House No. 7/140,
Bhatlem, Near Sati Temple,
Panaji, Goa.
Currently residing at UK with
Spouse Mr. Imran Shaikh.

...Respondents

Ms Asha Desai, Special Public Prosecutor with Ms. S. Dessai,
Advocate for the Applicant.

Mr. H. G. Dharmadhikari with Ms Marilyn Alvares and Ms Lalita
Phadke, Advocates for Respondent No.1.

CORAM : VALMIKI MENEZES, J.

RESERVED ON : 3RD SEPTEMBER, 2026

PRONOUNCED ON : 1ST OCTOBER, 2026.

JUDGMENT:

1. Registry to waive office objections in Criminal Revision
Application No. 120/2024(F), Criminal Revision Application

No. 296/2024 and Criminal Revision Application No. 207/2024(F) and register the matters.

2. These Criminal Revision Applications No. 08/2024 (filed by Accused No.1-Mohan Kapse), 208/2026 (filed by Accused No.2 Charudatta Ozarkar) 207/2026 (filed by Accused No.4-Saira Shaikh) and 209/2026 (filed by the State) challenge order dated 10.11.2023 passed by the Special Judge, South Goa at Margao, in Special Case (SPCC) No. 2 of 2022, arising from FIR No. RC 2(A)/2020-CBI/ACB/GOA registered on 07.01.2020 by the CBI under Section 120-B r/w Sections 420, 468 and 471 IPC and from Chargesheet which came to be filed on 27.12.2021 under Section 120-B r/w Section 420, 468 and 471 IPC and Sections 7, and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. By the impugned order, the Sessions Court has discharged Accused No.1, 2 and 4 of the offences under sections Section 420, 468 and 471 r/w 120-B IPC but directed charge to be framed under Section 7, and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (the PC Act); the impugned order has discharged Accused No.3 in toto.

FACTS

3. An FIR was registered on 07.01.2020 by the Central Bureau of Investigation (Goa) alleging that between 2017 and

2019, Mohan Kapse (Accused No.1), then Assistant Commissioner of Customs, Goa, entered into a criminal conspiracy with Charudatta Ozarkar (Accused No.2), a private person, to defraud the Customs Department. Accused No.1 is alleged to have dishonestly issued 114 work orders for furniture, electrical and renovation work at the Customs House, Goa out of which 80 of them were issued without following tender procedure, to four fictitious firms (M/s Apna Bazar, M/s Stylo, M/s Manoj Enterprises and M/s Mahalaxmi Trading Co.), floated by Accused No.2. Accused No.3 (Ms. Nagma Shaikh) and Accused No.4 (Ms. Saira Shaikh) , who were employees of Accused No.2, allegedly created forged supporting documents (quotations, rent agreements, etc.) to open bank accounts and obtain the work orders.

A chargesheet was filed on 29.12.2021 for offences under Section 120-B read with Sections 420, 468 and 471 IPC, and Section 13(2) read with Section 13(1)(d), and Section 7, of the PC Act (as amended in 2018) against all four accused.

4. The Special Judge took cognizance on 29.04.2022 of the offences under the PC Act, in the absence of any sanction under Section 19 of the Act and issued summons to the four Accused. Sanction under Section 19 of the Act was granted by Government of India-Ministry of Finance, Department of Revenue Central

Board of Indirect taxes and Customs by the Office of the Chief Vigilance Officer, on 05.05.2022 and produced before the trial court on 01.06.2022.

5. The Accused No.1, 3 and 4 on 07.10.2022 filed Applications for discharge under section 239 CrPC at Exhibit-44, 42 and 43 respectively; the State vide replies dated 16.11.2022 opposed the said applications to which the Accused No.1 filed his rejoinder on 19.07.2023, the Accused No.3 and 4 filed joint synopsis ; the Accused No.2 filed application for discharge on 03.02.2023 to which the State filed its reply on 01.03.2023 and synopsis on 28.04.2023 to which the Accused No.2 filed rejoinder dated 09.08.2023.

6. By the impugned order dated 10.11.2023, the Special Judge discharged Accused No.1, Accused No.2 and Accused No.4 of the offences under Sections 420, 468, 471 r/w Section 120-B IPC but directed that charge be framed against them under Section 13(2) r/w Section 13(1)(d) and Section 7 of the PC Act; the Trial Court discharged Accused No.3 in toto, of all offences under both the PC Act and the IPC. This order framing charge under Prevention of Corruption Act is assailed by the Accused No.1,2 and 4, whereas the State has assailed the said order directing the discharge of Accused No.1,2 and 4 for offences under IPC and for discharging Accused No.3 of all offences.

SUBMISSIONS

7. Advocate for the Applicant/Accused No.4 (Saira), Mr.Vilas Thali in Criminal Revision Application No. 207/2026 has advanced the following submissions:

- a. That this Accused is not Government employee and could therefore never be charged for offences under the PC Act.
- b. That post facto sanction granted under Section 19 of the PC Act, itself vitiates the order of taking cognizance of the offence under the PC Act, and therefore the Trial Court ought to have discharged all Accused.
- c. It was submitted that once the Accused No.1, who was a Government employee was discharged, the facts that constitute the charge under the PC Act are so related, that the private Accused would necessarily have to be discharged under the PC Act.
- d. On merits, the learned Counsel submits that the allegations in the charge sheet is that Accused No.4 was part of the conspiracy by which the Local Purchase Committee, of which Accused No.1 was a member, allotted work orders to Accused No.2; that merely because

Accused No.4 was an employee of Accused No.2, and in the absence of any imputation or specific facts being alleged to demonstrate how Accused No.4 was privy to the conspiracy with Accused No.1, there was no material to frame charge against Accused No.4.

e. Reliance has been placed on the following case law:

- i. ***Hori Ram Singh v/s The Crown***¹
- ii. ***Shree Kantiah Ramayya Munnipalli v/s State of Bombay***²
- iii. ***Amrik Singh V/s State of Pepsu***³
- iv. ***Matajog Dobey v/s H.C. Bhari***⁴
- v. ***Pukhraj v/s State of Rajasthan***⁵
- vi. ***B.Saha v/s M.S. Kochar***⁶
- vii. ***Manohar Nath Kaul v/s State of Jammu and Kashmir***⁷
- viii. ***Shambhoo Nath Misra v/s State of U.P.***⁸
- ix. ***State of Kerala v/s Padmanabhan Nair***⁹

¹ 1939 SCC OnLine FC 2

² (1954) 2 SCC 992

³ 1955 SCC OnLine SC 102

⁴ 1955 SCC OnLine 44

⁵ (1973) 2 SCC 701

⁶ (1979) 4 SCC 177

⁷ (1983) 3 SCC 429

⁸ (1997) 5 SCC 326

⁹ (1999) 5SCC 690

- x. *Dilawar Singh v/s Parvinder Singh*¹⁰
- xi. *Central Bureau of Investigation Versus Akhilesh Singh*¹¹
- xii. *Neera Yadav v/s CBI*¹²
- xiii. *Parkash Singh Badal v/s State of Punjab*¹³
- xiv. *State of M.P v/s Sheetala Sahai*¹⁴
- xv. *Shri Atchut Mucund Alornekar v/s CBI*¹⁵
- xvi. *Dr. Arun Kumar Chowdhary v/s State of U.P*¹⁶
- xvii. *Rajib Ranjan v/s Vijay Kumar*¹⁷
- xviii. *I.O.P v/s Battenpatla*¹⁸
- xix. *Tridev Jan Kalyan Samiti v/s U.K Subuddhi*¹⁹
- xx. *Nanjappa v/s State of Karnataka*²⁰
- xxi. *N.K. Ganguly v/s CBI*²¹

¹⁰ (2005) 12 SCC 709

¹¹ (2005) 1 SCC 478

¹² 2006 SCC OnLine All 141

¹³ (2007) 1 SCC 1

¹⁴ (2009) 8 SCC 617

¹⁵ 2012 SCC OnLine Bom 1256

¹⁶ 2013 SCC OnLine All 540

¹⁷ (2015) 1 SCC 513

¹⁸ (2015) 13 SCC 87

¹⁹ 2015 SCC OnLine MP 7725

²⁰ (2015) 14 SCC 186

²¹ (2016) 2 SCC 143

*xxii. Surinderjit Singh Mand and Anr v/s
State of Punjab and anr.*²²

*xxiii. Indra Devi v/s State of Rajasthan*²³

*xxiv. A. Srinivasulu v/s State*²⁴

*xxv. State of Punjab v/s Partap Singh
Verka*²⁵

*xxvi. Krishna Bhagwan Kotak Versus State
Of Maharashtra*²⁶

*xxvii. CBI v/s Ramesh Chander Diwan*²⁷

8. Advocate for the Applicant/Accused No.1, Mr. H.G Dharmadikari in Criminal Revision Application No. 8/2024 has advanced the following submissions:

a. That since no previous sanction was obtained prior to the order of taking cognizance, and this being a mandatory provision of section 19 of the Act, the only option to the Trial Court, following the ratio in *Nanjappa* (supra) was to discharge the Accused No.1.

²² (2016) 8 SCC 722

²³ (2021) 8 SCC 768

²⁴ (2023) 13 SCC 705

²⁵ 2024 SCC OnLine SC 1659

²⁶ 2024 SCC OnLine BOM 2811

²⁷ 2025 SCC OnLine SC 871

b. That no previous sanction has been taken under Section 197 of CrPC for offences under IPC in relation to Accused No.1; in the absence of such sanction, cognizance could never had been taken by the Trial Court of those offences.

c. That there is no offence made out from the facts in the Chargesheet under Section 7 of the PC Act, as the material to the Chargesheet does not state that there was any demand or acceptance of gratification; it was submitted that the essential ingredients of the offence under Section 13(1) (d) of the PC Act, such as undue advantage being taken by the Accused of his position have not been made out.

d. Reliance has been placed on the following case law:

- i. Vasant Tukaram Mandavkar v/s LIC of India*²⁸
- ii. Jamil Akhtar v/s State of West Bengal*²⁹
- iii. Manoranjan Prasand Choudary v/s State of Bihar*³⁰
- iv. P.A Mohandasv/s State of Kerala*³¹

²⁸ 1996 (3) LLN 449

²⁹ (2001) SCC OnLine Cal 128

³⁰ (2002) 10 SCC 688

³¹ (2003) 9 SCC 504

- v. *State of Madhya Pradesh v/s Sheetla Sahai and Ors*³²
- vi. *Nanjappa (Supra)*
- vii. *Jatan Kumar Garg v/s Satyanarayan Tiwari ILR*³³
- viii. *Rajani Dabar v/s State of MP*³⁴
- ix. *A. Srinivasulu (supra)*
- x. *C. Surendranath & Anr v/s State of Kerala*³⁵
- xi. *Pradeep Kumar v/s State of Kerala*³⁶
- xii. *N.K Ganguly (supra)*
- xiii. *State of Goa v/s Babu Thomas*³⁷
- xiv. *Dilawar Singh (supra)*
- xv. *Yuvraj H Ladhwa v/s State of Gujarat and Ors., vide Judgement dated 22.09.2023 in R/Criminal Revision Application No.242 of 2013 passed by the High Court of Gujarat*
- xvi. *Anjani Kumar v/s State of Bihar*³⁸

³² (2009) 8 SCC 617

³³ 2017 MP 467

³⁴ ILR 2018 MO 253

³⁵ CDJ 2024 Ker HC 058

³⁶ 2024 SCC OnLine Ker 277

³⁷ (2005) 8 SCC 130

³⁸ CDJ 2008 SC 763

xvii. State through CBI v/s B.L Verma and Another³⁹

xviii. Shoukkathali v/s State of Kerala⁴⁰

xix. Munna Prasad Verma v/s State of U.P and Anr⁴¹

xx. Dalip Kaur and Ors v/s Jagnar Singh and Anr⁴²

xxi. Anil Kumar Bose v/s State of Bihar⁴³

xxii. Sachidanand Sharma v/s State of Jharkhand and Anr⁴⁴

xxiii. Vazhuthacaud R. Narendran Nair v/s State of Kerala⁴⁵

xxiv. M.S Banga v/s State of West Bengal and Anr⁴⁶

xxv. C.Chenga Reddy and Ors v/s State of A.P⁴⁷

³⁹ (1997) 10 SCC 772

⁴⁰ CDJ 2005 Ker High Court 502

⁴¹ (2022) 10 SCC 169

⁴² (2009) 14 SCC 696

⁴³ (1974) 4 SCC 616

⁴⁴ 2024 SCC OnLine Jhar 191

⁴⁵ 2024 SCC OnLine Ker 862

⁴⁶ 2004 SCC OnLine Cal 443

⁴⁷ (1996) 10 SCC 193

*xxvi. Dr.Naimuddin @Naim Ahmad v/s
District Judge Etah and Ors⁴⁸*

xxvii.A.Jafferullah v/s T.Stanes and Co.Ltd⁴⁹

*xxviii. Ratan Babulal Lath v/s State of
Karnataka⁵⁰*

*xxix. M.Narayan Nambiar v/s State of
Kerala⁵¹*

9. Advocate for the Applicant/Accused No.2 (Charudatta Ozarkar), Mr. Vaibhav Ugle in Criminal Revision Application No.208/2026 has adopted the arguments advanced on behalf of Accused Nos. 1 and 4. Though served, Accused No.3 has chosen not to appear in the Criminal Revision Application filed by the State.

10. Special Public Prosecutor Adv. Ms. Asha Desai Appearing for the State in Criminal Revision Application No.207 of 2024 and for Respondent No.1 in Criminal Revision Applications No. 08/2024, 208/2026 and 207/2026 has advanced the following submissions:

a. It was submitted that once sanction is granted for prosecution of Accused No. 1 under Section 19 of the

⁴⁸ 2004 SCC OnLine All 887

⁴⁹ (1994) 80 Comp Cas 759

⁵⁰ 2021 SCC OnLine SC 875

⁵¹ 1962 SCC OnLine Sc 85

P.C. Act, for offences under Sections 7, 13 (1)(d) and 13(2) of that PC Act, the offences of which Accused No. 1 has been Charge-sheeted under the Indian Penal Code (Section 420 Section 468 and Section 475 read with Section 120B), the sanction under Section 19 of the PC Act would suffice and cover all offences under IPC; it was further submitted that the sanction granted in the present matter to prosecute Accused No. 1, even though refers to the offences under the PC Act, must be considered as a sanction under Section 197 Cr. P.C. for all offences. Reliance is placed to buttress the submissions on ***Prakash Singh Badal*** (supra).

b. It was then submitted that since ex-post facto sanction was accorded to the Chargesheet, the Trial Court ought not to have discharge the Accused, without assessing the material in the Chargesheet; it was submitted that there is enough material in the Chargesheet to frame a charge against the four Accused.

c. Reliance has been placed on the following:

- i. Union of India v/s Praful Kumar Samal⁵²*
- ii. Shivendranath Verma v/s Union of India vide order dated 22.07.2024 in Criminal Appeal No.3019 of 2024 arising out of SLP (Cri) No.12708/2023*
- iii. Neera Yadav (supra)*
- iv. I.O.P v/s Battenapatla Venkata Rtanam (supra)*
- v. Padmanabhan Nair (supra)*
- vi. Manohar Nath Kaul (supra)*
- vii. Rajib Ranjan (supra)*
- viii. Dr. Arun Kumar Choudhary (supra)*

CONSIDERATIONS:

11. Before considering submissions at the Bar, note would have to be taken of certain relevant facts, which are not in dispute. Accused No. 1 is admittedly a Public Servant (Assistant Commissioner of Customs, Goa) employed with the Central Government between the period of 2017 to 2019, when the offence is alleged to have taken place. He has been discharged

⁵² (1979) 3 SCC 4

by the Trial Court of offences under IPC, but charged for the offences under PC Act. Accused Nos.2 to 4 are admittedly not Public Servants. They have been roped in as conspirator with Accused No. 1 applying Section 120B IPC. They have been discharged of offences under IPC and charged under offences under PC Act. Accused No. 3 has been discharged of offences, both under IPC and PC Act.

12. The offence by Accused No.1 under the PC Act and IPC is alleged to have taken place between the years 2017 to 2019; according to the Chargesheet, it is alleged that whilst Accused No. 1 was posted in Goa and functioning as the Senior most Member of the Purchase Committee at Customs, Goa, he has conspired with Accused No.2 from whom he obtained fake quotations from non-existent firms of the Accused No. 2 at exorbitant rates for purchase of office furniture, electronics and electrical items; that based on this fake quotations Work Orders were issued to Accused No. 2 on these fictitious firms and payments were made to them. Accused Nos. 3 and 4 were respectively employees of the Accused No. 2 during this period.

13. The Chargesheet came to be filed on these allegations on 29.12.2021, admittedly without obtaining sanction under Section 19 of the PC Act, nor under Section 197 of the Cr.P.C. to prosecute Accused No. 1. The Trial Court, in the absence of

sanction took cognizance of the offence and passed an order doing so on 29.04.2022, and the Accused were summoned to appear before it. Sanction was accorded for prosecution of Accused No.1 on 05.05.2022, restricted to Section 19 of the PC Act. The sanction order does not grant sanction for prosecution of offences under Sections 420, 468, 471 read with Section 120B IPC. the sanction order was produced before the Trial Court only on 01.06.2022. It is only thereafter that the four Accused moved applications for their discharge, on which the present impugned order was passed.

14. In these background facts, the following point for determination requires to be considered:

(a) Whether in the absence of sanction under Section 19 of the PC Act and under Section 197 Cr.P.C. to prosecute the Accused No. 1, he and the Accused Nos. 2 to 4 are required to be discharged?

(b) Whether a case has been made out from the material on record for discharge of the four Accused on merits?

15. For the purpose of answering the point for determination, it would be apposite to refer to some of the decisions of the Hon'ble Supreme Court on the subject. In **B. L. Verma** (supra), the Supreme Court was dealing with the challenge by the CBI to

the order of the High Court holding that lack of sanction to prosecute a person under Section 197 Cr. P.C., would not empower the designated Court to take cognizance of the offences under the IPC, against a Public Servant. Whilst upholding the view of the High Court and confirming this position of law, the Supreme Court also considered, what would be the effect if sanction under Section 197 Cr. P.C. was granted after discharge. The relevant parts of the Judgment are quoted below:

“5. We agree with

The High Court has rightly found that that would not oust the necessity of sanction under Section 197 CrPC to take cognizance of the offence. The expression "no court shall take cognizance of such offence except with the previous sanction" occurring in Section 197 CrPC unmistakably shows that the bar on the exercise of powers by the court to take cognizance is mandatory and the previous sanction from the competent authority for prosecution of the public servant, who is accused of having committed an offence either in the execution of his duties or in the purported execution of his duties is essential to take cognizance Thus in the absence of sanction under Section 197 CrPC the court of the Chief Metropolitan Magistrate could not have taken cognizance of the offence against the respondent and the High Court, therefore, committed no error in directing the dropping of proceedings against him, in the absence of such a sanction.

6. We do not find any reason to interfere with the impugned order of the High Court dated 4-12-1996.

7. However, before parting with this order, we would like to clarify, lest there be any ambiguity, that the direction of the High Court to drop the proceedings against the respondent was on account of want of sanction under Section 197(1) CrPC, and should the competent authority hereafter grant sanction under Section 197 CrPC, It will be perfectly valid and open to the petitioner herein to activate the prosecution against the respondent and the order of the High Court dated 4-12-1996 or this order shall not come in the way of the court

to take cognizance nor shall the orders come in the way of the competent authority to grant sanction under Section 197 CrPC, after considering the facts and circumstances of the case if the CBI applies for obtaining sanction. Nothing said hereinabove shall, however, be construed as any expression of opinion on the merits of the case, and the competent authority of the court as the case may be, shall decide the matter on its own merits.”

16. The Supreme Court has therefore opined that cognizance could not have been taken of the offence against the Public Servant in the absence of the sanction accorded under Section 197 Cr. P.C., but however observed that should such sanction be granted by the competent authority, it would be perfectly valid and open to the CBI to activate the prosecution against the Accused and the earlier order of discharge or refusal to take cognizance would not come in the way of grant of sanction or of the Court to take cognizance after such grant.

17. In ***Babu Thomas*** (supra), a Chargesheet was filed under the PC Act and for offences under IPC. A sanction order under Section 19 had been filed along with the Chargesheet. The sanction order was issued by the Company Secretary of the Goa Shipyard, a Central Government undertaking, but subsequently a fresh sanction order was filed after cognizance was taken by the correct competent authority. In these facts, the Supreme Court has made the following observation:

“12. As already noticed, the sanction order is not a mere irregularity, error or omission. The first sanction order dated 2-1-1995 was issued by an authority that was not a competent authority to have

issued such order under the Rules. The second sanction order dated 7-9-1997 was also issued by an authority, which was not competent to issue the same under the relevant a rules, apart from the fact that the same was issued retrospectively w.e.f. 14-9-1994, which is bad. The cognizance was taken by the Special Judge on 29-5 1995 Therefore, when the Special Judge took cognizance on 29-5-1995, there was no sanction order under the law authorising him to take cognizance. This is a fundamental error which invalidates the cognizance as without jurisdiction. b

13. This being the law, we are unable to sustain the submission of learned counsel for the appellant.

14. Having regard to the gravity of the allegations levelled against the respondent, we permit the competent authority to issue a fresh sanction order by an authority competent under the Rotes and proceed afresh against the respondent from the stage of taking cognizance of the offence and in c accordance with law.”

18. Thus, in ***Babu Thomas*** (supra), what has been held is that cognizance taken by Special Court on the basis of a sanction which was not competently issued, invalidates the cognizance of the offence and is cognizance taken without jurisdiction. As a consequence of upholding the invalidity of the order taking cognizance, the Supreme Court permitted the competent authority to issue a fresh sanction order and to proceed afresh against the Accused.

19. In ***Nanjappa*** (supra), the Supreme Court was considering a case where the High Court had reversed an order of acquittal passed by the Trial Court and convicted the Appellant for offences under the PC Act. Before the High Court, it was held that since the validity of the sanction order was not questioned

prior to conclusion of the trial, the Accused was precluded from raising this issue at the Appellate stage. The Supreme Court allowed the Appeal on the short ground that in the absence of a valid previous sanction required under Section 19 of the PC Act, the Trial Court was not competent to take cognizance of the offence against the Accused. Note must be taken of the fact that in *Najappa* (supra), a sanction under Section 19 of the PC Act was in fact produced, but the arguments advanced for the Accused was that mere production of the sanction would not preclude the Special Judge at any stage of the proceedings to hold that the prosecution was not maintainable for want of a valid order. In that case, the Trial Court had held the sanction produced, to be invalid since it was issued by authority incompetent to grant the sanction. In the background of these facts, the following observations of the Supreme Court would be of relevance:

“22.The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption Act is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with law. If the trial court proceeds, (despite the invalidity attached to the sanction order, the same shall be deemed to be non est in the eyes of law and shall not forbid a

second trial for the same offences, upon grant of a valid sanction for such prosecution.

23. Having said that there are two aspects which we must immediately advert to. The first relates to the effect of sub-section (3) to Section 19, which starts with a non obstante clause. Also relevant to the same aspect would be Section 465 CrPC which we have extracted earlier.

23.1. It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of Section 19(3), any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of Explanation to Section 4, "error includes competence of the authority to grant sanction". The argument is on the face of it attractive but does not, in our opinion, stand closer scrutiny.

23.2. A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error omission or irregularity. Sub-section (3), in other words, simply forbid Interference with an order passed by the Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad b save) and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub-section (3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1).

23.3) Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same.

23.4. The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident

even from the language employed in sub-section (4) according to which the appellate or the revisional court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub-sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher court and not before the Special Judge Trying the accused.

23.5 The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning the prosecution under Section 19(1). Failure of justice is, what the appellate or revisional court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision.

24. In the case at hand, the Special Court not only entertained the contention urged on behalf of the accused about the invalidity of the order of sanction but found that the authority issuing the said order was incompetent to grant sanction. The trial court held that the authority who had issued the sanction was not competent to do so, a fact which has not been disputed before the High Court or before us. The only error which the trial court, in our opinion, committed was that, having held the sanction to be invalid, it should have discharged the accused rather than recording an order of acquittal on the merit of the case.”

20. What can be observed from **Nanjappa** (supra), was that the decision was passed not under circumstances that cognizance was taken in the absence of an order of sanction under Section

19, but whether, the Trial Court could invalidate the sanction order, which was produced along with the Chargesheet at the end of the trial.

21. *Nanjappa* (supra) was considered by the Supreme Court in *Shivendranath Verma* (supra), where the Supreme Court upheld the orders of the Trial Court refusing to take cognizance of the offence under the PC Act in the absence of sanction by the competent authority. Whilst upholding this contention, the Supreme Court considered the order of sanction obtained after the order of cognizance was passed and held that the ratio in *Nanjappa* (supra) would not extend and operate as invalidating the sanction granted after the order taking cognizance was passed.

22. In *Prakash Singh Badal* (supra) the Supreme Court has examined the validity of proceedings initiated under the PC Act and IPC in the absence of lack of sanction under Section 197 of the Cr. P.C., in that context, it has observed that the offence of cheating under Section 420 or those under Section 467, 468, 471 and 120 B of the IPC can by most sketch of imagination, by their very nature be regarded as having being committed by public servant, by acting or purporting to act in discharge of official functions. This Judgment has however been clarified by the Hon'ble Supreme Court in a later Judgment of *A. Srinivasalu*

(supra), and the context in which the Hon'ble Supreme Court made such observations in ***Prakash Sing Badal*** (supra). Referring to the observations in para 50 of ***Prakash Singh Badal*** (supra), the Supreme Court held as under:

"52. Shri Padmesh Mishra, learned counsel for the respondent placed strong reliance upon the observation contained in para 50 of the decision of this Court in Parkash Singh Badal v. State of Punjab¹⁷ It reads as follows. (SCC pp. 37-38, para 50)

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

(emphasis supplied)

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

54. But the above contention in our opinion is far-fetched. The observations contained in para 50 of the decision in Parkash Singh Badal¹⁷ are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under Sections 420, 468, 471 and 120-B cannot be regarded as having been committed by a public servant while acting or purporting to act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 e of the Code does not carve out any group of offences that will fall outside its purview. Therefore, the observations contained in para 50 of the decision in Parkash Singh Badal ¹⁷ cannot be taken as carving out an exception judicially, to a statutory prescription. In fact, Parkash Singh Budal¹⁷ cites with approval the other decisions (authored by the very same learned Judge) where this Court made a distinction between an act, though in excess of the duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. Interestingly, the proposition laid down in Rakesh Kumar Mishra ¹⁴

was distinguished in para 49 of the decision in Parkash Singh Badal¹⁷, before the Court made the observations in para 50 extracted above.

55. No public servant is appointed with a mandate or authority to commit an offence. Therefore, if the observations contained in para 50 of the decision in Parkash Singh Badal¹⁷ are applied, any act which constitutes an offence under any statute will go out of the purview of an act in the discharge of official duty. The requirement of a previous sanction will thus be rendered redundant by such an interpretation.”

23. Applying the ratio of the Judgments referred to above, to the facts of the present case, grant of sanction under Section 19 of the PC Act would be a prerequisite for taking cognizance of the offences under the PC Act against Accused No. 1, who was a Government Servant. Accused Nos. 2 to 4 have been roped in by applying Section 120-B, and have sought to be charged as conspirator for offences under the PC Act along with the Accused No. 1. Clearly from the record, as on the date that the Trial Court took cognizance of the offences (29.04.2022) under Sections 7, 13(2) and 13(1) (D) of the PC Act, there was no order of sanction in place. The order of sanction under Section 19 was filed on 01.06.2022. The order dated 29.04.2022, taking cognizance of the offences under the PC Act and IPC against Accused No. 1 was clearly without jurisdiction and is therefore liable to be quashed and set aside. Consequently, therefore the impugned order dated 10.11.2023 directing charge to be framed against Accused No. 1 for offences under the PC Act is without jurisdiction and must be set aside.

24. In addition, the record reveals that the sanction order dated 05.05.2022 permits prosecution of the Accused No.1 for offences which are restricted to the PC Act, and no sanction is granted under Section 197 Cr. P.C. to prosecute this Accused for offences under the IPC. The Bar to take cognizance of an offence against the Accused No. 1, Government Employee in the absence of sanction under Section 197 Cr. P.C. would therefore apply, and consequently, the order dated 29.04.2022 taking cognizance of the offence under IPC against this Accused would be without jurisdiction. In these facts therefore, the arguments for the State that a sanction under 19 of the PC Act granted to prosecute Accused No. 1 for offences under that Act must be considered to be deemed sanction for the purpose of Section 197 Cr. P.C., to prosecute that Accused for the offences under IPC must be rejected.

25. Having held that the order taking cognizance of offences under the PC Act or under the IPC passed against Accused No. 1 was without jurisdiction, there is no other option but to hold that taking cognizance of the same offence against Accused Nos. 2 to 4, who are alleged to be part of the very same conspiracy with the Accused No.1, was without jurisdiction. Accused Nos. 2 to 4, could certainly not be charged with an offence under the PC Act in the absence of a charge being framed against Accused No. 1; this would be much less so in the case of taking cognizance of

such offences, both under PC Act and IPC, allegedly committed by Accused Nos. 2 to 4, the cognizance would have not been taken against Accused No. 1 himself. Having gone through the allegations in the Chargesheet, it is quite clear that the conspiracy as alleged therein demonstrates that the facts constituting the alleged offence against Accused Nos. 2 to 4, are so related to the offence alleged against Accused No. 1, that if Accused No. 1 could not be charged, the charge must fail against Accused Nos. 2 to 4. Consequently, therefore the order of taking cognizance of offences, both under PC Act and under IPC would necessarily have to be quashed and consequently any order to frame charge against them cannot be sustained.

26. On the findings given by me above, I answer the first point for determination in the affirmative. Since the orders taking cognizance of the offences, both under PC Act and under IPC against Accused Nos. 1 to 4 are without jurisdiction, these Accused stand discharged.

27. This brings me to the second point for determination framed above. After considering the decision of the Supreme Court in *Najappa* (supra), and upholding the order of the High Court quashing the order of taking cognizance, in *Shivendranath Verma* (supra), the Supreme Court left it open to the prosecution, who had obtained sanction subsequent to filing

of the Chargesheet, to press for examining the Chargesheet along with such subsequent order of sanction, and permitted the Trial Court to examine if a fresh order of cognizance could be passed. It has been urged by the State, that this Court, in the circumstances of this case, and in the light of the fact that the order of sanction had been filed before the Trial Court subsequent to the cognizance being taken, should take a similar course, and permit the Trial Court to examine the Chargesheet afresh for deciding whether the cognizance should be taken in the light of the subsequent sanction. After considering this submission and the specific facts of this case, as stated in the material produced with the Chargesheet, I am of the opinion, that no such purpose would be served of leaving the case open for the Trial Court to reconsider whether cognizance should be taken after considering the order of sanction.

28. On examining the material produced with the Chargesheet, the following facts become evident. The Accused No. 1 Mohan Kapse was the Assistant Commissioner of Customs and part of the Purchase Committee between 15.06.2017 and 08.11.2019, when he is alleged to have influenced the decisions of the Committee to award contracts to Accused No. 2 on the basis of fake quotations at exorbitant rates. The Chargesheet also alleges that Accused No. 2 had given fake quotations in the name of several of his non existing firms. It is also alleged in the

Chargesheet that the Accused No.1 would pressurize the other two members of the Committee, who were his subordinates to sign the quotations and based on such decisions, the contracts could be awarded to fictitious firms of the Accused No. 2.

29. From the materials produced with the Chargesheet, the other members of the Committee between July, 2017 and December, 2019 were the following persons:

July 2017 to December 2017	Mr.R.R.Naik (Superintendent Custodian)
January 2018 to May 2018	Mr. K.L Naik (Superintendent Custodian)
July 2018 to January 2019	Mr.S.L Morudkar (late) and Mr.Kishore Nagvekar (Superintendent Custodian)
February 2019 to December 2019	Mr.Vishwas Gaigole (Superintendent Custodian)
July 2017 to July 2018	Mr.Stanley Colaco (Superintendent Vigilance)
July 2018 to December 2019	Ms.Sahita Soman (Superintendent Vigilance)

30. The Chargesheet however nowhere referred to any of the statements of the other Committee members, recorded during investigation, that alleged coercion, or pressure being exerted by the Accused No. 1 on them to allot contracts to the firms of the

Accused No. 2. Even then, what follows by logic is that all the other committee members ought to have been roped in as Accused, as part of the decision making process, which the State alleges was to defraud the exchequer. This is even more so, since all these committee members were Government Employees in the level of Superintendents in the Customs department.

31. According to the Chargesheet, the process of effecting purchases for the Department, according to Delegation of Financial Powers, originates with Commissioner of Customs, Goa, who is designated as Head of Department and has full financial powers to accord expenditure. According to the procedure for procurement, the proposal originates from the Commissioner of Customs, after which the Purchase Committee comprising of Accused No. 1 and any two of the Superintendents who are listed in a table at the aforementioned paragraph are required to obtain quotations after completing a market survey, which quotations are required to be maintained under sealed cover and opened at the meeting of the Purchase Committee. The final decision as to whether the purchase is to be effected, is taken ultimately by the Commissioner, on the recommendation of the Purchase Committee of the best quotation.

32. Considering the procedure to be followed, and if the imputations in the Chargesheet are to be taken at their face value,

the Commissioner of Customs, Goa and all other members of the Purchase Committee would be as responsible in the decision making process, which the Chargesheet alleges, was influenced by Accused No. 1 for gains, which was dishonest. What is glaring is that the prosecution has chosen to leave out the Commissioner of Customs and all members of the Purchase Committee from being charged as Accused and has singled out the Accused No. 1. From the material annexed to the Chargesheet, it is difficult to understand how the Accused No. 1 was a privy to the conspiracy with Accused Nos. 2, 3 and 4, in the absence of the final decision maker i.e. the Commissioner of Customs and the other members of the Purchase Committee. This becomes even more evident from the fact that the Commissioner of Customs was never examined and there is no statement in the Chargesheet referring to the Commissioner's statement.

33. Accused Nos. 3 and 4 are admitted employees of Accused No. 2. There is absolutely no imputation of any participation of Accused No. 3 in the alleged conspiracy, though there are reference made to the fact that Accused No. 3 was the sister of the Accused No. 4 and was working as a Sales Executive in the shop of Accused No. 2. There is no material on record to demonstrate how Accused No. 3 participated in the conspiracy. As far as Accused No. 4 is concerned, it was alleged that she in order to help Accused No. 2, with whom she was employed,

opened an account on her name under the style of “Creative Enterprises” to facilitate Accused No. 2 to submit quotations on the name of this concern and ultimately to receive payments on the basis of the lowest quote picked by the Purchase Committee. However, even going by this fact, the material on the Chargesheet, does not prima facie establish, how there was conspiracy amongst Accused Nos. 1, 2 and 4, in the absence of roping in the other members of the Purchase Committee and the Commissioner of Customs to put the final decision as Accused. From the material in the Chargesheet, none of the offences specified in Sections 7 and 13 of the PC Act can be said to have been prima facie made out, for the purpose of formulating a charge under those Sections. No purpose would be served, under these circumstances in continuing the prosecution of this Chargesheet in the light of the observations made herein, as the case is bound to fail. It is in these circumstances, I am of the opinion that following the course taken by the Hon’ble Supreme Court in *Shivendranath Verma* (supra) by quashing and setting aside the order of taking cognizance and directing framing of charge against Accused Nos. 1, 2 and 4 under the PC Act, serves absolutely no purpose, as the Trial Court, even if it considers the post facto sanction granted, on the basis of the material in the Chargesheet ought not to take cognizance of the offences under the PC Act against these Accused.

34. For all the aforementioned reasons, the Criminal Revision Applications Nos. 08/2024 of Accused No. 1, Criminal Revision Application No. 208/2026 of Accused No. 2, Criminal Revision Application No. 207/2026 of Accused No. 4 are allowed and the order taking cognizance of the offences under Sections 7, and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and Sections 120-B r/w Section 420, 468 and 471 IPC stand quashed and set aside, consequently, they stand discharged. For reasons stated above, the Criminal Revision Application filed by the State bearing Criminal Revision Application No. 209/2026 stands dismissed. The discharge of Accused No. 3 is confirmed.

35. Criminal Revision Application No. 207/2026, Criminal Revision Application No. 208/2026, Criminal Revision Applications Nos. 08/2024 and Criminal Revision Application No. 209/2026 stand disposed of.

VALMIKI MENEZES, J.