

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.956 of 2002

=====

SANJAY KUMAR THAKUR, SON OF LATE SHIV KUMAR THAKUR,
RESIDENT OF VILLAGE-BAKHARA, P.S.-MOTIPUR, DISTRICT-
MUZAFFARPUR.

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR.
2. UDAY KUMAR, SON OF NOT KNOWN AT PRESENT INCHARGE
OFFICER, P.S.-AURAI, DISTRICT-MUZAFFARPUR.
3. SAIYED SHAMIMPUR RAHMAN, ASI, AURAI, P.S.
4. BASUDEO SINGH, ASI, AURAI, P.S.
5. BINDESHWARI PRASAD YADAV, ASI, AURAI, P.S.
6. HAWALDAR LAKSHMAN SINGH, P.S. AURAI
7. CONSTABLE NO.1112 SHYAM KUMAR RAI AURAI, P.S.
8. CONSTABLE 1089 INDRA KUER JHA P.S. AURAI
9. CONSTABLE 1118 SURENDRA PRASAD P.S. AURAI
10. CONSTABLE 1180 BINDESHWARI YADAV P.S. AURAI
11. CONSTABLE 667 ARJUN MANDAL P.S. AURAI
12. CONSTABLE 1151 SANJAY KUMAR SINGH P.S. AURAI
13. CONSTABLE 333 RAJ KISHORE RAI, P.S. AURAI
14. CONSTABLE 369 RAM PRAKASH YADAV P.S. AURAI
15. CONSTABLE 362 RAM KUMAR YADAV P.S. AURAI

ALL ACCUSED PERSONS AT PRESENT POSTED WITH AURAI, P.S.-
AURAI, DISTRICT-MUZAFFARPUR AND THEIR RESPECTIVE NATIVE
VILLAGE IS NOT KNOWN.

16. SONFI PASWAN CHOUKIDAR VILLAGE SHAHI MINAPUR P.S. AURAI,
DISTRICT-MUZAFFARPUR.

.... OPPOSITE PARTY/S

=====

Appearance:

For the Petitioner/s : Mr. B.P. Pandey, Sr. Advocate.
Mr. Jagnnath Singh, Advocate

Mr. P.K. Sinha, Advocate

For the Vigilance : Mr. Rama Kant Sharm, Sr. Advocate.

Mr. Lakshmi Kant Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 24-07-2015

Instant revision has been filed by the petitioner / complainant against an order dated 09.08.2002 passed by the Chief Judicial Magistrate, Muzaffarpur in Complaint Case No.1109 of 2000 dismissing the complaint petition under Section 203 of the Cr.P.C.

2. For better appreciation, the facts of the case in brief are as follows:-

Showing the date of occurrence as 14.04.2000 a complaint petition was filed on 03.06.2000 against altogether fourteen accused persons out of whom accused no.1 happens to be Officer-in-charge of Aurai Police Station while accused no.2 to 4 ASI of Aurai Police Station, accused no.5 Hawaldar of Aurai Police Station, accused no.6 to 14 Constable of Aurai Police Station. With a further detail that complainant Sanjay Kumar Thakur happens to be elder cousin brother of Sunil Kumar of village-Bakhara who, on account of death of his father shifted to village-Babhangama, P.S.-Aurai under the guardianship of his Nana. It has also been disclosed that on 14.04.2000 complainant and Sunil Kumar had gone to village Sahi

Meenapur to the place of one Om Prakash Sharma @ Ramprevesh Sahi for the marriage negotiation relating to Sunil's sister. At about 11:00 AM Sunil Kumar had gone to betel shop of Amrit Sah to purchase 'Gutaka' wherefrom Sunil Kumar and one Manoj were picked up by the police and were forced to sit in a Government jeep occupied by the accused persons, where they were assaulted and then jeep was driven away.

Then thereafter it has been alleged that all the accused persons came over two jeeps and one motorcycle and made house trespass belonging to Rampraves Sahi, Amrit Sah, Sitaram Sahni and also assaulted the family members during course thereof, whereupon the villagers assembled out of whom Guddu was picked up by the police and was taken away.

No sooner than, they heard sound of firing and further Sunil, Guddu and Manoj sustained injuries and in the same condition were taken to Aurai Police Station.

It has further been alleged that all the three namely Sunil Kumar, Manoj Kumar Suman, Satendra Kumar Sahi @ Guddu were killed by the police personnel and further, the police in order to save themselves from the charges of committing murder knowingly and intentionally prepared a false and incorrect document by drawing a false case in the pen of accused no.1 Uday Kumar, Officer-in-charge



Aurai Police Station on 14.04.2000 at 13:25 hours hatching a story that criminals have assembled for preparation to commit dacoity regarding which they got confidential information whereupon the police party arrived at Shahi Meenapur at 11:00 AM. After appearance, they have seen two motorcycle parked near which few persons were also seen who, seeing the police ran away. Police warned and further, instructed to stop instead thereof, they began to fire upon the police party. Even then, police party asked them to surrender as well as to stop firing however continued whereupon, apprehending danger to their life and property, S.I., Uday Kumar ordered for firing and on account thereof, police party fired from revolver as well as rifle. Criminals took position from a maize field and continued firing at police personnel which was retaliated. After sometime criminals stopped firing. Thereafter, police gone in search and found three dead bodies having firearm injuries and were identified as Satyendra Kumar @ Guddu, Sunil Kumar and one unknown which was subsequently identified as Manoj Kumar. Firearms and ammunitions were found and accordingly, seized.

3. It has further been averred that aforesaid three persons were intentionally murdered on account of political pressure and for that, a false story has been woven by the police. It has also been pleaded in para-11 that now it has to be seen in which manner



deceased were murdered and then thereafter from para-12 to 19, petitioner /complainant had detailed the circumstances justifying the complaint petition and further divulging the fact that all three deceased were brutally murdered and only to save their own skin, the accused persons registered a case. Much emphasis has been drawn up over place of occurrence as well as postmortem report and so the petitioner/complainant had stated that accused persons have committed an offence punishable under Sections 302, 218, 452, 342, 323, 504, 34 of the IPC in the background of admitted fact that deceased died of police firing.

4. It has also been disclosed that matter has been reported before higher police officials including DIG, Tirhut Range, Muzaffarpur as well as National Human Right Commission but could not get appropriate response.

5. It has further been asserted that action of police official was not at all covered under due discharge of official duty and on account thereof, no sanction under Section 197 of the Cr.P.C. is required.

6. It has also been disclosed that as all the accused happens to be police personnel, therefore, an enquiry under Section 202 of the Cr.P.C. should be conducted by the court itself.

7. After examination of petitioner/complainant on S.A.,



the learned lower court proceeded with an enquiry under Section 202 of the Cr.P.C. whereunder witnesses including doctor, exhibit of relevant documents including P.M. report were also made. Then thereafter, as pleaded on behalf of petitioner / complainant, case record of Aurai P.S. Case No.34 of 2000 was called for. At the present moment it looks relevant to mention that on account of death of all the culprits final form was submitted in the aforesaid Aurai P.S. Case No.34/2000 and as the same has already been accepted, consequent thereupon, chapter is closed.

8. After hearing the complainant as well as going through both the records along with appreciating the evidences, documents, the learned lower court viewed that act, so alleged, happens to be in due discharge of duty and on account thereof, sanction was required for taking cognizance of an offence against the accused and as same has not been obtained hence dismissed the complaint petition under Section 203 of the Cr.P.C.

9. It is also apparent from the connecting record that complaint petition no.882 of 2000 had also been filed by one Siyaram Sah, father of one of the accused victim Manoj and further, it is apparent from the last order sheet dated 23.02.2010 / 12.02.2015 that matter is still pending.

10. After admitting the revision on 29.10.2002 proposed

accused / OPs were noticed and they have got their appearance.

11. Manifold arguments have been raised on behalf of petitioner challenging the finding recorded by the learned lower court. The first and foremost argument as canvassed relates with function of the court at the stage of inquiry being conducted under Section 202 Cr.P.C. On this score, it has been submitted that whenever a complaint is filed in terms of Section 200 of the Cr.P.C. and the learned Magistrate intends to proceed with an inquiry, that speaks with regard to application of judicial mind relating to the allegation and, conduction of enquiry under Section 202 of the Cr.P.C. is confined only for the purpose of ascertaining the culprit responsible for commission of the offence as per allegation. Therefore, the learned counsel submitted that the court, in the aforesaid facts and circumstances, already taken judicial notice of the allegation as well as attracting particular section whereunder those allegations were punishable as well as triable. Furthermore, by cogent and reliable evidence as well as by placing circumstances, not only prima facie case has been brought up on record, the culprit have also been exposed who were none else than arrayed as an accused.

12. From the order of the learned lower court it is apparent that it did not controvert the prima facie evidence so produced during course of an enquiry under Section 202 of the Cr.P.C. and in likewise

manner, proper identification of the accused responsible for commission of an offence.

13. In its continuity, it has further been argued that after having application of judicial mind to the facts of the case, the allegation as well as assertion made in the complaint petition will be deemed to be accepted and then, in that circumstance, there was no opportunity left for the learned lower court to differ therefrom. As such, withholding itself by the court contrary to the spirit of law did not justify legality of the order impugned. To support the same relied upon AIR 1963 SC 1413, AIR 2012 SC 1921, (2005) 7 SCC 467 .

14. It has further been submitted that learned lower court while dismissing the petition under Section 203 of the Cr.P.C. under the garb of Section 197 Cr.P.C. misdeemed the soul of Section 197 Cr.P.C. Further explaining the issue, it has been submitted that application of Section 197 Cr.P.C. is found permissible only in such kind of cases where accused happens to be public officer removable only by the Government and not by its sub-ordinate. All the accused persons, right from Officer-in-charge of Aurai P.S. to a constable did not occupy such status. As they are to be removable by the order of the S.P. as well as D.G.P., therefore, granting of such protection could be found above immaculateness. As such, finding of the learned lower court recording as well as allowing protection to the accused in terms

of Section 197 Cr.P.C. is found against the spirit of law.

15. In its continuity, the learned counsel for the petitioner further emphasized that protection is available only in the event of having it committed in due discharge of duty by a public servant. Murdering an innocent under the garb of face police encounter cannot be accepted as an act committed in due discharge of duty. There should also be nexus in between the act committed with in due discharge of duty which could be apparent from the fake of allegation. During course of inquiry, witnesses have had stated regarding act committed by the accused persons which happens to be nothing but police atrocity which cost life of three innocent persons without any rhyme and reason as well as the allegation so propounded at the level of accused person is found completely belied with after having the evidence of doctor inconsonance with the postmortem report, exhibit of the record.

16. Apart from this, though Section 197 Cr.P.C. contains non-obstante clause forbidding taking of cognizance without sanction but times without number, the aforesaid clause has been tested by the Hon'ble Apex Court and has been made sterile relating to its requirement at the initial stage on the other end, gave an opportunity to be raised at any appropriate stage during trial. Furthermore, it has been held that where it happens to be a complex issue, then in that



event, same be decided after collection relevant materials at any stage of trial during course of which the matter could be raised and, even if so raised, and in case there happens be clumsy material on the record, it should be decided after of all the relevant materials orally as well as documentary collected during trial. In support of such plea also relied upon. AIR 2001 SC 2547, AIR 2002 SC 2861.

17. Because of the fact that the question of sanction would not be decided in summary manner on account thereof, dismissal of complaint under the garb of Section 197 Cr.P.C. happens to be bad, illegal and without jurisdiction.

18. Referring the facts of the case in the present context, it has been submitted that there happens to be specific disclosure in the complaint petition that the accused persons lifted three persons without having any sort of complaint pending since before against them and took them along with and then thereafter shot at, prima facie speaks a glaring example of fake encounter whereupon it cannot be construed that those acts fall within the category of due discharge of duty and that being so, certainly there was no application of Section 197 Cr.P.C.

19. It has been also been submitted that mere registration of Aurai P.S. Case No.34 of 2000 will not serve the purpose at least over present stage as, during course of passing of an order after conclusion of an inquiry under Section 202 of the Cr.P.C., defence of accused

would not be looked into nor the document purported to be in their favour. Only prima facie material has to be seen which, the petitioner had sufficiently placed on record. As such, the dismissal of complaint for want of sanction as recorded by the learned lower court did not justify its prevalence and is fit to be set aside.

20. On the other hand, the learned counsel representing opposite party nos.2 to 15 submitted that the submission raised on behalf of petitioner has got no leg to stand. It has been submitted that presence of Section 197 Cr.P.C. is not for allowing malafide, frivolous prosecution of a public servant against whom an unscrupulous litigant proceed to conculcate. That happens to be reason behind incorporating the legal requirement in terms of presence of sanction before taking of cognizance. As such, whenever there happens to be apparent material on the record which speaks regarding commission of an offence as alleged by a complainant, in due discharge of duty or is intermingled in such way that it cannot be segregated, then in that event, staking for sanction as well as dismissing the complaint for want of sanction appears to be legally maintainable. Furthermore, it has been submitted that the Hon'ble Apex Court, after taking into account its earlier pronouncement held that prosecution against public servant is maintainable only in case there happens to be presence of sanction order and for that, referred

2014(1) PLJR SC 4.

21. In order to appreciate the rival contention it looks desirable to see Section 197 Cr.P.C. which reads as follows:

“197. Prosecution of Judges and public servants –

(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:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the

Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union whole acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted

(3A) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein,

except with the previous sanction of the Central Government

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held”

22. As is apparent from plain reading of Section 197 of the Cr.P.C., basically two conditions are to be fulfilled, the first one, the



accused should be a public servant that too removable from office either by the Union Government or by the State Government and secondly, he has been made an accused of an offence alleged to have been committed while acting or purporting to act in due discharge of his official duty. Certain exceptions is also found incorporated therein and so far present scenario is concerned, it relates with sub-clause (3) which speaks deployment of forces, charged with the maintenance of public order and their status so notified by the State Government covering the protection like armed forces, as incorporated under subsection (2), whereunder status of accused has been ignored requiring sanction by the State for their prosecution. That means to say, the status of accused to be removable by the Government has been mitigated.

23. Admittedly, as the opposite party nos.2 to 15 are the persons being under lower ladder of forces but happens to be police officials engaged in law and order. Neither petitioner nor opposite party nos.2 to 15 have been able to file any notification in terms of section 197(3) Cr.P.C. However the aforesaid notification has been traced out in a case *Om Prakash v. State of Jharkhand & Anr. Kailashpati Singh v. Rajiv ranjan Singh & Anr.* reported in (2012) 12 SCC 72, its para-9 discloses presence of aforesaid notification which the Hon'ble Apex Court had perceived in following way "We

have been shown a copy of the Notification dated 16-5-1980 issued by the State of Bihar which extends the protection of sub-section (2) of Section 197 of the Code to all the members of the police force as it includes both officers and men.” That means to say, police officials irrespective of their status found duly armoured.

24. The facts of the Om Prakash (supra) happens to be almost similar to present one wherein deceased Munna Singh @ Amit Pratap Singh was allegedly killed by the police officials in a fake encounter. After taking into account rival submissions made on behalf of respective counsels as well as also considering the death having been committed on account of firearm injury and further, having a police case on that very score, recovery of arms and ammunition, the status of the accused person and delve the issue of sanction its requirement and held:-

“32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (*K. Satwant Singh [AIR 1960 SC 266]*). The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection (*Ganesh Chandra Jew [(2004) 8 SCC 40]*). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are

so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood.

33. We must now deal with the submission of Mr Gonsalves that the question of sanction must be studied with reference to the complaint and not with reference to the documents produced by the accused to set up a plea of self-defence. In support of this submission, Mr Gonsalves heavily relied on *Hori Ram Singh* [AIR 1939 FC 43]. In that case, the Federal Court was considering the expression “act done or purporting to be done in the execution of his duty as a servant of the Crown” appearing in Section 270(1) of the Government of India Act, 1935. The following observations of the Federal Court are material: (AIR p. 55)

“... As the consent of the Governor, provided for in [Section 270(1)], is a condition precedent to the institution of proceedings against a public servant, the necessity for such consent cannot be made to depend upon the case which the accused or the defendant may put forward after the proceedings had been instituted, but must be determined with reference to the nature of the allegations made against the public servant, in the suit or criminal proceeding. If these allegations cannot be held to relate to ‘any act done or purporting to be done in the execution of his duty’ by the defendant or the accused ‘as a servant of the Crown’, the consent of the authorities would, prima facie, not be necessary for the institution of the proceedings. If, in the course of the trial, all that could be proved should be found to relate only to what he did or purported to do ‘in the execution of his duty’, the proceedings would fail on the merits, unless the Court was satisfied that the acts complained of were not in good faith. ... Even otherwise, the proceedings would fail for want of the consent of the Governor, if the evidence established only official acts.”

34. In *Matajog Dobey* [AIR 1956 SC 44] the Constitution Bench of this Court was considering what is the scope and meaning of a somewhat similar expression “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty” occurring in Section 197 of the Criminal Procedure Code (5 of 1898). The Constitution Bench observed that no question of sanction can arise under Section 197 unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. On the question as to which act falls within the ambit of above quoted expression, the Constitution Bench concluded that there must be a reasonable connection between the act and the discharge of official duty; the act

must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim that he did it in the course of performance of his duty. While dealing with the question whether the need for sanction has to be considered as soon as the complaint is lodged and on the allegations contained therein, the Constitution Bench referred to *Hori Ram Singh* [AIR 1939 FC 43] and observed that at first sight, it seems as though there is some support for this view in *Hori Ram Singh* [AIR 1939 FC 43] because Sulaiman, J. has observed in the said judgment that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution and Varadachariar, J. has also stated that: (*Matajog Dobey case* [AIR 1956 SC 44], AIR p. 49, para 20)

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

It is pertinent to note that the Constitution Bench has further observed that a careful perusal of the later parts of the judgment however show that the learned Judges did not intend to lay down any such proposition. The Constitution Bench quoted the said later parts of the judgment as under: (*Matajog Dobey case* [AIR 1956 SC 44], AIR pp. 49-50, para 20)

“20. ... Sulaiman, J. refers to the prosecution case as disclosed by the complaint or the ‘police report’ and he winds up the discussion in these words: (*Hori Ram Singh case* [AIR 1939 FC 43], AIR p. 52 : FCR p. 179)

‘... Of course, if the case as put forward fails, or the defence establishes that the act purported to be done [is] in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground.’

The other learned Judge also states: (*Hori Ram Singh case* [AIR 1939 FC 43], AIR p. 55 : FCR p. 185)

‘... At this stage, we have only to see whether the case alleged against the appellant or sought to be proved against him relates to acts done or purporting to be done by him in the execution of his duty.’

It must be so. The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction.

Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case.”

The legal position is thus settled by the Constitution Bench

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

35. In *Raj Kishor Roy*[(2002) 6 SCC 543], the appellant had filed a complaint against Respondent 1 therein, who was a police officer that he had assaulted him and levelled false charges against him. The Judicial Magistrate, Bhagalpur, issued summons. Respondent 1 filed a petition for quashing the order issuing summons on the ground that sanction under Section 197 of the Code has not been obtained. The High Court quashed the said order on the ground that there was no sanction to prosecute Respondent 1. In the facts before it, this Court observed that the question whether Respondent 1 acted in discharge of his duty, could not have been decided in a summary fashion. This Court observed that it was the appellant's case that Respondent 1 had brought an illegal weapon and cartridges and falsely shown them to have been recovered from the appellant. This Court observed that this is the type of case where the prosecution must be given an opportunity to establish its case by evidence and an opportunity be given to the defence to establish that he had been acting in the official course of his duty. There is thus a clear indication that this Court had restricted its observations to the facts before it. It is pertinent to note that this Court referred to the Constitution Bench judgment in *Matajog Dobey*[AIR 1956 SC 44] and observed that in that case, the Constitution Bench has held that need for sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein and the question may arise at any stage of the proceedings.

36. In *Pukhraj* [(1973) 2 SCC 701], the appellant, who was a clerk in the Head Post Office, Jodhpur had filed a complaint against Respondent 2, who was the Post Master General, Rajasthan, alleging offences under Sections 323 and 502 IPC. Respondent 2 filed an application praying that the court should not take cognizance of the offence without the sanction of the Government as the acts alleged, if at all done by him, were done while discharging his duties as a public servant. The Rajasthan High Court held that Respondent 2 could not be prosecuted unless prior sanction of the Central Government has been obtained. The order taking cognizance was quashed. This Court referred to *Hori Ram Singh*[AIR 1939 FC 43] as well as *Matajog Dobey*[AIR 1956 SC 44]. This Court reiterated that whether sanction is necessary or not may have to be decided from stage to stage but in the facts of the case before it, this Court set aside the High Court's order.

37. In *Nagraj* [AIR 1964 SC 269], the appeal was



directed against the order of the High Court rejecting the reference made by the Sessions Judge, Shimoga Division recommending the quashing of the commitment order of the Magistrate committing the accused to the sessions trial for offences under Sections 307 and 326 IPC on the ground that the Magistrate could not have taken cognizance of the offences without sanction of the State Government in view of the provisions of Sections 132 and 197 of the Criminal Procedure Code of 1898. The appellant therein was a Sub-Inspector. He along with another person had severely beaten up one Thimma and had wantonly fired from the revolver at other persons. It was contended that if the question of sanction is not decided in the very first instance when a complaint is filed or when the accused alleges that he could not be prosecuted for the alleged offences without sanction of the Government, the protection given by law will be nugatory as the object of giving this protection is that the police officer is not harassed by any frivolous complaint. It is important to note that this Court in the context of the peculiar facts before it, noted that there may be some such harassment of the accused, but it had no means to hold in the circumstances alleged that the prosecution of the appellant was in connection with such action as the complaint did not disclose the necessary circumstances indicating that fact and the bare word of the accused cannot be accepted to hold otherwise. It is in this background that the Court observed that the jurisdiction of this Court to proceed with the complaint emanates from what is alleged in the complaint and not from what is finally established in the complaint as the result of the evidence recorded. Pertinently, this Court made reference to the Constitution Bench judgment in *Matajog Dobey*[AIR 1956 SC 44] where it is observed that whether sanction is necessary or not may have to be determined from stage to stage. In our opinion, the observation of this Court that the mere allegation made by the appellant police officer that the action taken by him was in performance of his duty, will not force the court to throw away his complaint of which it had properly taken cognizance on the basis of the allegations in the complaint will have to be read against the peculiar facts of the case and not as stating something which runs counter to the law laid down by the Constitution Bench in *Matajog Dobey*[AIR 1956 SC 44].

38. In *Abdul Wahab Ansari v. State of Bihar*[(2000) 8 SCC 500] this Court was again considering the question as to when the plea that sanction was required to be obtained under Section 197(1) of the Code can be raised. This Court reiterated that: (SCC p. 505, para 7)

“7. Previous sanction of the competent authority being a precondition for the court in taking cognizance of the offence if the offence alleged to have been committed by the accused can be said to be an act in

discharge of his official duty, the question touches the jurisdiction of the Magistrate in the matter of taking cognizance and, therefore, there is no requirement that an accused should wait for taking such plea till the charges are framed.”

39. In our opinion *Sankaran Moitra* [(2006) 4 SCC 584] puts doubts, if any, to rest. In that case the complainant had filed a complaint before the Deputy Commissioner of Police that she had come to know from the members of the public that her husband was beaten to death by the police. She arrayed the Assistant Commissioner of Police and other police personnel as accused and prayed for stern action against them. Accused 1 filed a petition under Section 482 of the Code before the High Court for quashing of the complaint on the ground that the complaint could not have been entertained for want of sanction under Section 197(1) of the Code. The High Court dismissed the petition. Before this Court it was argued that want of sanction under Section 197 of the Code did not affect the jurisdiction of the Court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate stage. This Court considered *Hori Ram Singh*[AIR 1939 FC 43], the Constitution Bench judgment in *Matajog Dobey*[AIR 1956 SC 44] and several other judgments on the point and rejected the said submission. We must reproduce the relevant paragraph: (*Sankaran Moitra case*[(2006) 4 SCC 584], SCC pp. 600-01, para 22)

“22. The learned counsel for the complainant argued that want of sanction under Section 197(1) of the Code did not affect the jurisdiction of the court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate time. We are not in a position to accept this submission. Section 197(1), its opening words and the object sought to be achieved by it, and the decisions of this Court earlier cited, clearly indicate that a prosecution hit by that provision cannot be launched without the sanction contemplated. It is a condition precedent, as it were, for a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at the inception, but even at a subsequent stage. We cannot therefore accede to the request to postpone a decision on this question.”

40. This Court also observed that: (*Sankaran Moitra case*[(2006) 4 SCC 584], SCC p. 596, para 11)

“11. ... postponing a decision on the applicability or otherwise of Section 197(1) of the Code can only lead to the proceedings being dragged on in the trial court and a decision by this Court, here and now, would be more appropriate in the circumstances of the case especially when the accused involved are police personnel and the

nature of the complaint made is kept in mind.”

41. The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the Code. It is not possible for us to hold that in such a case, the court cannot look into any documents produced by the accused or the public servant concerned at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea. At this point, in order to exclude the possibility of any misunderstanding, we make it clear that the legal discussion on the requirement of sanction at the very threshold is based on the finding in the earlier part of the judgment that the present is not a case where the police may be held guilty of killing Munna Singh in cold blood in a fake encounter. In a case where on facts it may appear to the court that a person was killed by the police in a stage-managed encounter, the position may be completely different.

42. It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial. This Court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognised as legal by our criminal justice administration system. They amount to State-sponsored terrorism. But, one cannot be oblivious of the fact that there are cases where the police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact. In such circumstances, while the police have to do their legal duty of arresting the criminals, they have also to protect themselves. The requirement of sanction to prosecute affords protection to the policemen, who are sometimes required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. Sanction must be a precondition to their prosecution. It affords necessary protection to such police personnel. The plea regarding sanction can be raised at the inception.”

25. Application of Section 197(2) has again been taken into consideration in Chief Officer commanding *Army Headquarters v. CBI* reported in (2012) 6 SCC 228 wherein also an allegation of fake encounter resulting killing of five persons was alleged and the Hon'ble Apex Court after dealing with the relevant provisions decided the same in the following manner:-

“Sanction for prosecution

42. The protection given under Section 197 CrPC 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. Use of the expression “*official duty*” implies that the act or omission must have been done by the public servant in the course of his service and that it should have been done 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. 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 CrPC cannot be disputed. (See *R. Balakrishna Pillai v. State of Kerala*¹⁶, *S.K. Zutshi v. Bimal Debnath*¹⁷, *Centre for Public Interest Litigation v. Union of India*¹⁸, *Rakesh Kumar Mishra v. State of Bihar*¹⁹, *Anjani Kumar v. State of Bihar*²⁰ and *State of M.P. v. Sheetla Sahai*²¹.)

43. The question to examine as to whether the sanction is required or not under a statute has to be considered at the time of taking cognizance of the offence and not during enquiry or investigation.

44. There is a marked distinction in the stage of investigation and prosecution. The prosecution starts when the cognizance of offence is taken. It is also to be kept in mind that the cognizance is taken of the offence and not of the offender. The sanction of the appropriate authority is necessary to protect a public servant from unnecessary harassment or prosecution. Such a protection is necessary as an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the honest officer.

45. However, performance of public duty under colour of duty cannot be a camouflage to commit a crime. The public duty may provide such a public servant an opportunity to commit crime and such issue is required to be examined by the sanctioning authority or by the court. It is quite possible that the official capacity may enable the public servant to fabricate the record or misappropriate public funds, etc. Such activities definitely cannot be integrally connected or inseparably interlinked with the crime committed in the course of the same transaction. Thus, all acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of requirement of sanction. [Vide *Bhanuprasad Hariprasad Dave v. State of Gujarat*²², *Hareram Satpathy v. Tikaram Agarwala*²³, *State of Maharashtra v. Budhikota Subbarao*²⁴, *Anil Saran v. State of Bihar*²⁵, *Shambhoo Nath Misra v. State of U.P.*²⁶ (SCC p. 328, paras 4-5) and *Choudhury Parveen Sultana v. State of W.B.*²⁷]

46. In fact, the issue of sanction becomes a question of paramount importance when a public servant is alleged to have acted beyond his authority or his acts complained of are in dereliction of the duty. In such an eventuality, if the offence is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, grant of prior sanction becomes imperative. It is so, for the reason that the power of the State is performed by an executive authority authorised in this behalf in terms of the Rules of Executive Business framed under Article 166 of the Constitution of India insofar as such a power has to be exercised in terms of Article 162 thereof. (See *State of Punjab v. Mohd. Iqbal Bhatti*²⁸.)

47. In *Satyavir Singh Rathi*¹² this Court considered the provisions of Section 140 of the Delhi Police Act, 1978 which bars the suit and prosecution in any alleged offence by a police officer in respect of the act done under colour of duty or authority in exercise of any such duty or authority without the sanction and the same shall not be entertained if it is instituted more than 3 months after the date of the act complained of. A complaint may be entertained in this

regard by the court if instituted with the previous sanction of the administrator within one year from the date of the offence. This Court after considering its earlier judgments including *Jamuna Singh*¹¹, *State of A.P. v. N. Venugopal*²⁹, *State of Maharashtra v. Narhar Rao*³⁰, *State of Maharashtra v. Atma Ram*³¹ and *Prof. Sumer Chand v. Union of India*³², came to the conclusion that the prosecution has been initiated on the basis of FIR and it was the duty of the police officer to investigate the matter and to file a charge-sheet, if necessary. If there is a discernible connection between the act complained of by the accused and his powers and duties as police officer, the act complained of may fall within the description of colour of duty. However, in a case where the act complained of does not fall within the description of colour of duty, the provisions of Section 140 of the Delhi Police Act, 1978 would not be attracted.

48. This Court in *State of Orissa v. Ganesh Chandra Jew*³³, while dealing with the issue held as under: (SCC p. 47, para 7)

“7. ... 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.”

(emphasis added)

(See also *P. Arulswami v. State of Madras*³⁴.)

49. This Court in *Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan*³⁵ held as under: (SCC pp. 217-18, para 23)

“23. ... The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence *except with a previous sanction* of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking

cognizance, the accused after appearing before the court on process being issued, by an application indicating that Section 197(1) is attracted merely assists the court to rectify its error where jurisdiction has been exercised which it does not possess. *In such a case there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible, for adjudication of the question as to whether in fact Section 197 has any application in the case in hand.* It is no longer in dispute and has been indicated by this Court in several cases that the *question of sanction can be considered at any stage of the proceedings.*”

(emphasis added)

50. In *Matajog Dobey v. H.C. Bhari*³⁶, the Constitution Bench of this Court held that requirement of sanction may arise at any stage of the proceedings as the complaint may not disclose all the facts to decide the question of immunity, but facts subsequently coming either to notice of the police or in judicial inquiry or even in the course of prosecution evidence may establish the necessity for sanction. The necessity for sanction may surface during the course of trial and it would be open to the accused to place the material on record for showing what his duty was and also the acts complained of were so interrelated or inseparably connected with his official duty so as to attract the protection accorded by law. The Court further observed that difference between “acting or purporting to act” in the discharge of his official duty is merely of a language and not of substance.

51. On the issue as to whether the court or the competent authority under the statute has to decide the requirement of sanction, the Court held: (*Matajog Dobey case*³⁶, AIR pp. 48-49, paras 15 & 17)

“15. ... Whether sanction is to be accorded or not is a matter for the Government to consider. *The absolute power to accord or withhold sanction conferred on the Government is irrelevant and foreign to the duty cast on the court*, which is the ascertainment of the true nature of the act.

* * *

17. ... There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits.

What we must find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.”

(emphasis added)

52. In *Sankaran Moitra v. Sadhna Das*³⁷ this Court held as under: (SCC p. 602, para 25)

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

(See also *Rizwan Ahmed Javed Shaikh v. Jammal Patel*³⁸.)

53. In *B. Saha v. M.S. Kochhar*³⁹, this Court dealt with the issue elaborately and explained the meaning of “official” as contained in the provisions of Section 197 CrPC, observing: (SCC pp. 184-85, paras 14 & 17)

“14. ... In considering the question whether sanction for prosecution was or was not necessary, these criminal acts attributed to the accused are to be taken as alleged.

* * *

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 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, *directly and reasonably* connected with his official duty will require sanction for prosecution under the said provision.”

(emphasis in original)

54. In *Parkash Singh Badal v. State of Punjab*⁴⁰ this Court reiterated the same view while interpreting the phrase “official duty”, as under: (SCC p. 29, para 12)

“12. ... ‘6. ... 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 the 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.’ (*Budhikota Subbarao case*²⁴, SCC pp. 346-47, para 6)”

55. In *P.K. Choudhury v. Commander, 48 BRTF (GREF)*⁴¹, this Court dealt with the issue wherein an army officer had allegedly indulged in the offence punishable under Section 166 IPC—public servant disobeying law, with intent to cause injury to any person and Section 167 IPC—public servant framing an incorrect document with intention to cause injury, and as to whether in such an eventuality sanction under Section 197 CrPC was required. The Court held as under: (SCC p. 232, para 12)

“12. ... As the offences under Sections 166 and 167 of the Penal Code have a direct nexus with commission of a criminal misconduct on the part of a public servant, indisputably an order of sanction was prerequisite before the learned Judicial Magistrate could issue summons upon the appellant.”

56. The Court in *P.K. Choudhury case*⁴¹ further rejected the contention that sanction was not required in view of the provisions of Sections 125 and 126 of the Army Act, which provided for a choice of the competent authorities to try an accused either by a criminal court or proceedings for Court Martial. Section 126 provides for the power of the criminal court to require delivery of offender. The Court held that in case the competent authority takes a decision that the accused was to be tried by ordinary criminal court, the provisions of CrPC would be applicable including the law of limitation and the criminal court cannot take cognizance of the offence if it is barred by limitation. In case the delay is not condoned, the court will have no jurisdiction to take the cognizance. Similarly, unless it is held that a sanction was not required to be obtained, the court’s jurisdiction will be barred.

57. This Court in *Nagraj v. State of Mysore*⁴², held that: (AIR p. 275, para 18)

“18. The last question to consider is that if the court comes at any stage to the conclusion that the *prosecution could not have been instituted without the sanction of the Government*, what should be the procedure to be followed by it i.e. whether the court should discharge the *accused or acquit him of the charge* if framed against him or just *drop the proceedings and pass no formal order of discharge or acquittal as contemplated in the case of a prosecution under the Code*. The High Court has said that when the Sessions Judge be satisfied that the *facts proved bring the case within the mischief of Section 132 of the Code* then he is at liberty

to reject the complaint holding that it is *barred by that section*. We consider this to be the right order to be passed in those circumstances. It is not essential that the court must pass a formal order *discharging or acquitting the accused*. *In fact no such order can be passed. If Section 132 applies, the complaint could not have been instituted without the sanction of the Government and the proceedings on a complaint so instituted would be void, the court having no jurisdiction to take those proceedings. When the proceedings be void, the court is not competent to pass any order except an order that the proceedings be dropped and the complaint is rejected.*”

(emphasis added)

58. In *Naga People’s Movement of Human Rights v. Union of India*⁴³, the Constitution Bench of this Court while dealing with the issue involved herein under the provisions of Section 6 of the Armed Forces (Special Powers) Act, 1958, held as under: (SCC pp. 146 & 151, paras 52 & 61)

“52. Under Section 6 protection has been given to the persons acting under the Central Act and it has been prescribed that no prosecution, suit or other legal proceeding shall be instituted against any person in respect of anything done or purported to be done in exercise of the powers conferred by the said Act except with the *previous sanction* of the Central Government. *The conferment of such a protection has been assailed on the ground that it virtually provides immunity to persons exercising the powers conferred under Section 4 inasmuch as it extends the protection also to ‘anything purported to be done in exercise of the powers conferred by this Act’*. It has been submitted that adequate protection for members of armed forces from arrest and prosecution is contained in Sections 45 and 197 CrPC and that a separate provision giving further protection is not called for. It has also been submitted that even if sanction for prosecution is granted, the person in question would be able to plead a statutory defence in criminal proceedings under Sections 76 and 79 of the Indian Penal Code. The protection given under Section 6 cannot, in our opinion, be regarded as conferment of an immunity on the persons exercising the powers under the Central Act. Section 6 only gives protection in the form of *previous sanction* of the Central Government *before* a criminal prosecution or a suit or other civil proceeding is *instituted against such person*. Insofar as such protection against prosecution is concerned, the provision is similar to that contained in Section 197 CrPC which covers an offence alleged to have been committed by a public servant ‘while acting or purporting to act in the discharge of his official duty’. Section 6 only extends this protection in the matter of institution of a suit or other legal proceeding. ...

* * *

61. In order that the people may feel assured that there is an effective check against misuse or abuse of powers by the members of the armed forces it is necessary that a complaint containing an allegation about misuse or abuse of the powers conferred under the Central Act should be thoroughly inquired into and, if it is found that there is substance in the allegation, the victim should be suitably compensated by the State and the requisite sanction under Section 6 of the Central Act should be granted for institution of prosecution and/or a civil suit or other proceedings against the person/persons responsible for such violation.”

(emphasis added)

59. In *Jamiruddin Ansari v. CBI*⁴⁴, this Court while dealing with the provisions of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter called as “MCOCA”) held that: (SCC pp. 330-31, paras 68-69)

“68. As indicated hereinabove, the provisions of Section 23 are the safeguards provided against the invocation of the provisions of the Act which are extremely stringent and far removed from the provisions of the general criminal law. If, as submitted on behalf of some of the respondents, it is accepted that a private complaint under Section 9(1) is not subject to the rigours of Section 23, then the very purpose of introducing such safeguards lose their very *raison d’être*. At the same time, since the filing of a private complaint is also contemplated under Section 9(1) of MCOCA, for it to be entertained it has also to be subject to the rigours of Section 23. Accordingly, in view of the bar imposed under sub-section (2) of Section 23 of the Act, the learned Special Judge is precluded from *taking cognizance* on a private complaint upon a separate inquiry under Section 156(3) CrPC. The bar of Section 23(2) continues to remain in respect of complaints, either of a private nature or on a police report.

69. In order to give a harmonious construction to the provisions of Section 9(1) and Section 23 of MCOCA, upon receipt of such private complaint the learned Special Judge has to forward the same to the officer indicated in clause (a) of sub-section (1) of Section 23 to have an inquiry conducted into the complaint by a police officer indicated in clause (b) of sub-section (1) and only thereafter *take cognizance of the offence* complained of, *if sanction is accorded* to the Special Court to take cognizance of such offence under sub-section (2) of Section 23.”

(emphasis added)

60. This Court in *Harpal Singh v. State of Punjab*⁴⁵, while dealing with the provision of Section 20-A(2) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter called “TADA”) held as under: (SCC p. 390,

para 8)

“8. The important feature which is to be noted is that the prosecution did not obtain sanction of the Inspector General of Police or of the Commissioner of Police for prosecution of the appellant under TADA at any stage as is required by Section 20-A(2) of TADA. The trial of the appellant before the Designated Court proceeded without the sanction of the Inspector General of Police or the Commissioner of Police. *In absence of previous sanction the Designated Court had no jurisdiction to take cognizance of the offence or to proceed with the trial of the appellant under TADA.*”

(emphasis added)

61. In *Rambhai Nathabhai Gadhvi v. State of Gujarat*⁴⁶, this Court while dealing with the same provisions of TADA, held that: (SCC p. 748, para 8)

“8. ... Thus a valid sanction is sine qua non for enabling the prosecuting agency to approach the court in order to enable the court to take cognizance of the offence under TADA as disclosed in the report. The corollary is that, if there was no valid sanction the Designated Court gets no jurisdiction to try a case against any person mentioned in the report as the court is forbidden from taking cognizance of the offence without such sanction. If the Designated Court has taken cognizance of the offence without a valid sanction, such action is without jurisdiction and any proceedings adopted thereunder will also be without jurisdiction.”

62. In *State of H.P. v. M.P. Gupta*⁴⁷, this Court while dealing with the issue held as under: (SCC p. 358, para 10)

“10. ... Use of the words ‘no’ and ‘shall’ makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of.”

(emphasis added)

63. In broad and literal sense “cognizance” means taking notice of an offence as required under Section 190 CrPC. “Cognizance” indicates the point when the court first takes judicial notice of an offence. The court not only applies its mind to the contents of the complaint/police report, but also proceeds in the manner as indicated in the subsequent provisions of Chapter XIV CrPC. (Vide *R.R. Chari v. State of U.P.*⁴⁸ and *State of W.B. v. Mohd. Khalid*⁴⁹.)

64. In *Subramanian Swamy v. Manmohan Singh*⁵⁰ this Court dealt with the issue elaborately and explained the meaning of the word “cognizance” as under: (SCC p. 90, para 34)

“34. ... In legal parlance cognizance is ‘taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether

there is any basis for initiating proceedings and determination of the cause or matter judicially’.”

(emphasis added)

[See also *Bhushan Kumar v. State (NCT of Delhi)*⁵¹.]

65. In *State of U.P. v. Paras Nath Singh*⁵², this Court explained the meaning of the term “*the very cognizance is barred*” as that the complaint cannot be taken notice of or jurisdiction or exercise of jurisdiction or power to try and determine causes. In common parlance, it means taking notice of. The court, therefore, is precluded from entertaining a complaint or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

66. The relevant provisions in CrPC read as under:

“45. Protection of members of the armed forces from arrest.—(1) Notwithstanding anything contained in Sections 41 to 44 (both inclusive), no member of the armed forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.

* * *

197. (2) No court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.”

68. In *Azimunnissa v. Custodian*⁵⁴, a Constitution Bench of this Court held: (AIR p. 370, para 20)

“20. The word ‘purport’ has many shades of meaning. It means *fictitious, what appears on the face of the instrument; the apparent and not the legal import* and therefore *any act which purports to be done in exercise of a power is to be deemed to be done within that power notwithstanding that the power is not exercisable* ... Purporting is therefore indicative of what appears on the face of it or is apparent even though in law it may not be so.”

(emphasis added)”

26. Now coming to the facts of the case it is apparent that Aurai P.S. Case No.34 of 2000 was registered on the date of occurrence itself, divulging the fact that police had arrived at the place of occurrence after coming to know about presence of antisocial



elements for the purpose of commission of an offence and seeing the police, the accused persons began to run and during course thereof, aimed at police officials, took shelter in a maize field wherefrom firing continued and accordingly, was retaliated to put safeguard costing life of all the three culprits. After registration of case, it was investigated and police report was submitted closing the chapter on account of death of all the three culprits. Months thereafter, instant case has been filed and further, from bare perusal of complaint petition it is apparent that complainant was more cautious in getting an explanation to the police case than to plead its own case as well as concluded on the basis of explanation so furnished by way of counter meeting with the police case. On account of filing of complaint case after such long delay and further from the contents of the complaint petition it is apparent that complainant had not come with clean hand.

27. In the background of aforesaid settled legal proposition, it is abundantly clear that the application of Section 197 Cr.P.C. is not at all confined during course of subsequent stage rather it could be considered at the stage of cognizance also. Hence, stressing upon that at the relevant stage, only prima facie case has to be seen and nothing more, loses its credence because of the fact that presence of sanction would only enable to proceed further in tracing out prima facie case.

28. Consequent thereupon, instant petition lacks merit and is accordingly dismissed. However, it will be open to the petitioner to proceed with the trial in case succeeds in getting sanction by the State Government against the opposite party nos.2 to 15.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated 24th day of July, 2015
Prakash Narayan

U		T	
---	--	---	--