

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.10.2014

Date of decision: 30.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Crl.O.P. No.17327 of 2014

N.V.Thayumanavar

... Petitioner/Accused 1.

vs.

State represented by
Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Crime No.3/2007/AC/SL/SLP/NAMAKKAL

... Respondent/Complainant.

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the entire records in Spl.C.C.No.97 of 2014 pending before the learned Special Judge, Salem and quash the entire proceedings.

For Petitioner : Mr.A.V.Somasundaram
for M/s.Lakshmi Priya Associates

For Respondent : Mr.A.N.Thambithurai,
Additional Public Prosecutor

ORDER

The petitioner is facing charge in Special C.C.No.97 of 2014 on the file of the Special Judge, (Special Court for Prevention of Corruption Act), Salem. सत्यमेव जयते

2. A case was registered in Crime No.3/AC/2007/SL/SPL by the Vigilance and Anti-Corruption Salem Special Cell and after investigation, charge sheet was filed against the accused in that case for offences under section 120(B) IPC r/w 167, 467, 466, 468, 417, 419, 471, 477(A), 409 and 420 IPC and under section 13(2) r/w 13 (1)(c)&(d) of the Prevention of Corruption Act, 1988 r/w 109 IPC. In that case, the petitioner is arrayed as A.1.

3. The gravaman of the charge against the petitioner is as follows:-

The petitioner was formerly Deputy Commissioner of Labour (DCL), and Commissioner for Workmen's Compensation Act, at Salem and during his tenure between 2004 and 2005, while disbursing the compensation amount, as per the award passed by him in Workmen's Compensation Applications, he disbursed Account Payee Demand Drafts in the name of the persons alleged to be the claimants without verifying whether the persons who were to receive the Demand Drafts were the real claimants and created incorrect records as if the Demand Drafts were disbursed to right persons and thereby caused loss to the Insurance Company and cheated the claimants by way of abetting, impersonation, forgery, falsification of records and misappropriation. It has been stated that between 9.6.2004 and 3.6.2005, he was functioning as Commissioner for Workmen's Compensation. He entered into a criminal conspiracy with the other accused with dishonest intention to misappropriate the funds of the claimants, namely, P.Manoharan, Balasubramanian, R.Gopalakrishnan and Arun and also the funds of the Insurance Company by creating incorrect records through fabrication and forgery and therefore, he along with the other accused have committed the offence punishable under sections 120(B) of the IPC. During the said period, the petitioner with whom the compensation was entrusted with, in connivance with A.4 passed compensation awards in W.C.No.500 of 2002 to the claimant, Manoharan and in W.C.No.291 of 2002 in favour of P.Balasubramaniam and created records as if the Demand Drafts for the award amounts were disbursed to the claimants by forging and falsification of documents and therefore, the petitioner along with A.2 to A.4 committed the offence punishable under sections 120(B) IPC r/w 167, 467, 468, 417, 419, 409 and 420 IPC and under section 13(2) r/w 13(1)(c)&(d) of the Prevention of Corruption Act 1988 r/w 109 IPC. It is further stated that A.2 and A.3 in connivance with the petitioner opened Savings Account No.3945 in the name of Arun by impersonation, forgery and the petitioner in connivance with A.5 awarded compensation amount to Arun and disbursed the Demand Draft in the name of Arun without his appearance before him and created false records as if the Demand draft was disbursed to Arun. But, in fact, it was not given to Arun. Similarly, in respect of award amount passed in W.C.No.312 of 2002 in favour of R.Gopalakrishnan, the petitioner disbursed the amount by fabricating the Demand draft Acknowledgement receipt as if the Demand Draft was actually given to the claimant R.Gopalakrishnan but in fact, it was not given to Gopalakrishnan.

4. Mr.A.V.Somasundaram, for M/s.Lakshmi Priya Associates, learned counsel appearing for the petitioner, submitted that the charge levelled against the petitioner is liable to be quashed as the petitioner is entitled to protection under the provisions of the Judges Protection Act, 1985 and section 197 Cr.P.C., and no sanction was obtained under section 197 Cr.P.C. for prosecuting the petitioner who functioned as Judge while dealing with Workmen's Compensation claims. The learned counsel further submitted that the Commissioner under the Workmen's Compensation Act is passing awards after taking

evidence and therefore, he is a Judge as per the definition of "Judge" under section 2 of the Judges Protection Act, 1985 and the Office of the Commissioner in Workmen's Compensation has all the trappings of a Court and even according to the prosecution as a Judge, namely, as a Commissioner for Workmen's Compensation, he passed awards far in excess of the eligibility of the claimants and without verifying the identity of the persons to whom the Demand Drafts were to be disbursed as per the award, forged records to that effect and all such allegations will come under the ambit of Judges Protection Act and also under Section 197 Cr.P.C., as those acts were purportedly done by the petitioner in his official capacity as Judge while passing awards and therefore, sanction under section 197 Cr.P.C. is required. He also submitted that when a Judge did some thing in the course of his duty, he is entitled to protection as per section 3 of the Judges Protection Act. As the prosecution proceeds on the basis that he passed awards in excess of the eligibility of the claimants and the act of passing such awards comes within the scope of discharge of his duties, no prosecution can be initiated against the petitioner on that account. He also submitted that admittedly, the petitioner was not the Commissioner for Workmen's Compensation when the evidence was taken in those Claim Petitions and he came into the picture after the evidence was over and on the basis of the evidence and the arguments submitted by the learned counsel for the parties, he passed awards. After award amounts were deposited by Insurance Company, on the Application filed by the claimants duly verified and attested by the counsel for them, and also by the staff, the Demand Drafts were issued to those claimants and the petitioner bona fide believed that the person claimed to receive the Demand Drafts were the claimants as they were identified by the respective counsel and also by the office staff and he had no occasion to know about the identify of the claimants as he was not the person who examined them and therefore, it cannot be stated that he connived with the other accused, created false records and alleged impersonation. He further submitted sanction was obtained under section 19 P.C.Act and sanction under section 197 Cr.P.C. is necessary to prosecute a Government servant in respect of the acts done by him in the discharge of his duties. Therefore, in the absence of any sanction obtained under section 197 Cr.P.C., the case is liable to be quashed.

5. In support of his contention, the learned counsel for the petitioner relied upon the following judgments:-

- 1 Shreekantiah Ramayya Munipalli and another versus State of Bombay [AIR 1955 SUPREME COURT 287]
- 2 Matajog Dobey Versus H.C. Bhari (AIR 1956 SUPREME COURT 44)

- 3 Bakhshish Singh Brar vs Smt. Gurmej Kaur And Anr [AIR 1988 SUPREME COURT 257]
- 4 R.Balakrishna Pillai Versus State of Kerala and another [AIR 1996 SUPREME COURT 901]
- 5 Gauri Shankar Prasad Versus State of Bihar and another [(2000) 5 Supreme Court Cases 15]
- 6 Rakesh Kumar Mishra Versus State of Bihar and others [AIR 2006 SUPREME COURT 820]
- 7 Raghunath Anant Govilkar versus State of Maharashtra and others [(2008) 11 Supreme Court Cases 289]
- 8 Anjani Kumar versus State of Bihar and another [AIR 2008 SUPREME COURT 1992]
- 9 Rafiq Ahmed @ Rafi versus State of Uttar Pradesh [AIR 2011 SUPREME COURT 3114]
- 10 Lalu Prasad @ Lalu Prasad Yadav vs. State of Bihar Thr. CBI(AHD) Patna 2007 (1) SCC 49
- 11 State of H.P. Versus M.P.Gupta [(2004) 2 Supreme Court Cases 349]

6. Mr.A.N.Thambidurai, learned Additional Public Prosecutor, reiterated the allegations in the counter filed by the respondent and submitted that the petition is not maintainable. Without challenging the order passed in CrI.M.P.No.98 of 2014 filed by the petitioner for discharge which was dismissed by the learned Special Judge, the petitioner is not entitled to file Criminal O.P. to quash the charge sheet. He further submitted that the acts complained against the petitioner cannot be said to be done in the course of his official duties and the petitioner was not acting in pursuance of his duties in conspiring with the other accused for creating, forging the records, abetting impersonation and therefore, these acts fall outside the scope of official duties and therefore, there is no need for sanction under section 197 Cr.P.C.,. He further submitted that the contention of the learned counsel for the petitioner that the petitioner did not take evidence and therefore, he did not have the chance to see the claimants is liable to be rejected because

photographs of the claimants were affixed in the Application Forms and at the time of disbursing compensation awarded, he ought to have checked the photographs with the persons who claimed to be the applicants entitled to receive the award and had he compared the photographs found in the Application, he would not have disbursed the amounts to the persons who were not the claimants and that cannot be said to be dereliction of duty and considering the fact that the records were forged, altered and impersonation was enacted, the petitioner has acted in conspiracy and in connivance with the other accused and caused the loss to the Insurance Company as well as the claimants who were entitled to the compensation amount. He also submitted that as per the evidence, claimants, Manoharan, R.Gopalakrishnan, P. Balasubramaniam and Arun in W.C.No.500 of 2003, 312 of 2002, 291 of 2002 and 541 of 2002 respectively did not receive the award and the award amount was given to some strangers and after getting the statement of the real claimants and on the basis of documents, charge sheet was filed against the petitioner after getting sanction under section 19 of the P.C.Act and therefore, the petition is liable to be dismissed. He also submitted that the advocates who instructed the claimants are arrayed as A.4 and A.5 and the Secretary of the Primary Agricultural Co-Op.Bank (PACB) is arrayed as A.3 and with the connivance of A.2 to A.5, A.1 has committed the offence and therefore, the petition is liable to be dismissed.

7. The contention of the learned Additional Public Prosecutor is that the present petition filed by invoking the inherent jurisdiction of this Court under Section 482 of the Cr.P.C., is not maintainable as the petitioner filed Crl.M.P.No.98 of 2014 before the learned Special Judge for discharge and that was dismissed and without challenging the same, the present petition is not maintainable.

8. According to me, the argument of the learned Additional Public Prosecutor cannot be accepted having regard to the judgments reported in (1998) 8 Supreme Court Cases 770 in the matter of Jitender Kumar Jain Versus State of Delhi and others and (1997) 4 Supreme Court Cases 241 in the matter of Krishnan and another Versus Krishnaveni and another.

(a) In the judgment reported in (1998) 8 Supreme Court Cases 770 supra, it is held as follows:-

2. The appellant had moved the High Court of Delhi in a petition under Section 482 of the CrPC invoking its inherent jurisdiction. The High Court assumed the petition to be as if one under Section 397(2) [sic 397(3)] of the CrPC, which according to it did not lie since the revision petition preferred by the appellant had been dismissed by the Court of Session. We are of the

view that the High Court failed to distinguish its separate powers under Section 397 of the CrPC as also under Section 482 of the said Code. It is true that a second revision petition does not lie before the High Court when one is dismissed by the Court of Session. Still the Court of Session is a court subordinate to the High Court and, as such, its proceedings are open to scrutiny by the High Court in exercise of its inherent power under Section 482 of the CrPC. The High Court in these circumstances, should not have dismissed the petition of the appellant on the premise as it has done. It is otherwise open to the High Court not to interfere in a matter when examining a case under Section 482 of the CrPC. In this view of the matter, we set aside the impugned order of the High Court and remit the matter back to the High Court for reconsideration. It is ordered accordingly.

(b) In the judgment reported in (1997) 4 Supreme Court Cases 241 supra, it is held as follows:-

10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397 (1) or under inherent power of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397 (3) or section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstance, to exercise the inherent power and in an appropriate case even revisional power and in appropriate case even revisional power under Section 397 (1) read with

Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity or procedure, unnecessary delay in trial and protraction of proceedings

11. In *Madhu Limaye V/s. The State of Maharashtra* [(1977) 4 SCC 551], a three-Judge Bench was to consider the scope of the power of the High Court under Section 482 and Section 397 (2) of the Code. This Court held that the bar on the power of revision was put in order to facilitate expedient disposal of the case but in Section 482 it is provided that nothing in the Code which would include Section 397 (2) also, shall be deemed to limit or affect the inherent powers of the High Court. On a harmonious construction of said two provisions in this behalf, it was held that though the High Court has no power of revision in an interlocutory order, still the inherent power will come into play when there is no provision for redressal of the grievance of the aggrieved party.

Therefore, the petitioner is entitled to file the petition by invoking the inherent jurisdiction of the Court even though he has not challenged the order passed in CrI.M.P.No.98 of 2014.

9. We will have to see whether sanction under section 197 Cr.P.C. is required in respect of the alleged act committed by the petitioner.

10. As stated *supra*, the petitioner was the Deputy Commissioner of Labour (DCL) and Commissioner for Workmen's Compensation, Salem between 9.6.2004 and 3.6.2005. He passed awards in 13 W.C. Applications and in respect of four claim petitions, he disbursed the compensation awarded to the persons who were not the claimants and it is the specific case of the prosecution that in connivance with A.2 to A.5, the petitioner created records to misappropriate the funds of the claimants as well as the funds of the Insurance Company by impersonation, fabrication and forgery. The petitioner is A.1. A.2 and A.3 are the former Secretary and Attender of the Primary Agricultural Co-Op.Bank (PACB), Siluvampatty. A.4 and A.5 are the Advocates who appeared on behalf of the claimants.

11. It is the specific case of the prosecution that the petitioner entered into a criminal conspiracy with the other accused for the purpose of committing cheating, forgery, impersonation and misappropriation and distributed the amounts to the persons who were not the claimants. It is also admitted that the petitioner was not the Commissioner for Workmen's Compensation when the evidence was

taken in respect of those four claim petitions and he came into picture later and on the basis of records and on the basis of evidence taken by his predecessor, he passed the Awards. Though it was stated in the sanction order that he awarded compensation to the claimants at a higher percentage than the percentage of disability certified by the Doctors, no charge was framed for such allegation. As rightly submitted by the learned counsel for the petitioner by reason of the protection given to the petitioner who acted as Judge while passing award under the Workmen's Compensation Act, he cannot be prosecuted for passing excess award as passing of the award was in the course of discharge of his official duty. However, while framing the charge, the petitioner was only charged for disbursing the award amounts to those persons who were not the claimants without identifying the claimants correctly and he forged records as if the Demand Drafts were disbursed to the right persons and has also caused pecuniary loss to the Insurance Company and also cheated the real claimants. The claimants in W.C.Nos.500 of 2003, 291 of 2002 and 312 of 2002 were examined during investigation and have also given statement that they did not appear before the petitioner and they did not receive the Demand Drafts alleged to have been paid to them. Therefore, prima facie, it has been made clear by the prosecution that the Demand Drafts were given to the persons other than the claimants and the advocates who appeared for the claimants and the officials of the Primary Agricultural Co-Op.Bank (PACB), Siluvampatty, conspired together and got the awards paid to wrong persons. Therefore, we will have to see the role played by the petitioner in these matters.

12. Under the provisions of the Workmen's Compensation Act, when the award is passed, the award amount will be deposited by the respondent management, thereafter, notice has to be sent to the claimants for receiving the amount and on being satisfied with the identity of the claimants, the amount will be paid by way of Demand Draft to the claimants. In this case, the amounts were paid through Demand Drafts and it is the specific case of the prosecution that the persons who received the Demand Drafts from the petitioner were not the claimants and the petitioner in collusion with the other accused deliberately paid the Demand Drafts to wrong persons without taking any caution to verify the identity of those persons. Whether the act of the petitioner in handing over the Demand Drafts to the persons who appeared before him without verifying the identity would amount to dereliction of duty or deliberate negligent act or as a result of conspiracy to commit fraud and to misappropriate the funds, has to be considered in this petition. No doubt, it is true that the petitioner was not the Presiding Officer at the time of taking evidence and therefore, he had no occasion to see the claimants while giving evidence. It is contended that the persons who appeared while receiving the amount were identified by their respective counsel and therefore, the petitioner bona fide believed them and disbursed the amount to such persons on the basis of the

representation to the counsel who appeared for such person. As already stated whether the petitioner has committed bona fide mistake or he deliberately disbursed the amount to such persons who were not claimants has to be considered in this petition.

13. The main thrust of the submission of the learned counsel for the petitioner is that sanction was obtained only under Section 19 of the P.C.Act and sanction was not obtained under section 197 of the Cr.P.C., and therefore, the prosecution is liable to be quashed. It is settled law that the consideration of granting sanction under section 19 of the P.C.Act and consideration of granting sanction under section 197 Cr.P.C. are different. Therefore, as rightly submitted by the learned counsel for the petitioner that a sanction has to be obtained under section 197 Cr.P.C. if the acts were purported to have been done in the course of official duties.

14. In the judgment reported in AIR 1955 SUPREME COURT 287 supra, it has been held as follows:-

19. Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the present case, the elements alleged against the second accused are, first, that there was an "entrustment" and/or "dominion"; second, that the entrustment and/or dominion was "in his capacity as a public servant"; third, that there was a "disposal"; and fourth, that the disposal was "dishonest". Now it is evident that the entrustment and/or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity. Therefore, the act complained of, namely the disposal, could not have been done in any other way. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because the second accused could not dispose of the goods save by the doing of an official act, namely officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if

it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it.

20. The act of abetment alleged against him stands on the same footing, for his part in the abetment was to permit the disposal of the goods by the doing of an official act and thus "wilfully suffer" another person to use them dishonestly: section 405 of the Indian Penal Code. In both cases, the "offence" in his case would be incomplete without proving the official act.

15. In the judgment reported in AIR 1956 SUPREME COURT 44 supra, it has been held as follows:-

The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. 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. 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 inter-related 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. In *Hori Ram Singh v. Emperor*, AIR 1939 FC 43 at p.51(B), Sulaiman, J. observes:

"The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting

the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction".

This judgment is followed in the judgment reported in (2000) 5 Supreme Court Cases 15 supra.

16. In the judgment reported in AIR 1988 SUPREME COURT 257 supra, it is held as follows:-

"It is necessary to protect the public servants in the discharge of their duties. In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that Section 197 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence."

After quoting the above judgment, the Hon'ble Supreme Court held in AIR 2006 SUPREME COURT 820 supra, as follows:-

6. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his

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

This Judgment is followed in the judgments reported in AIR 2006 SUPREME COURT 820 and (2004) 2 Supreme Court Cases 349.

17. The facts of the case in the judgment reported in AIR 1996 SUPREME COURT 901 is also similar to the facts of the present case. In that case, it is held as follows:-

7. In the present case, the appellant is charged with having entered into a criminal conspiracy with the co-accused while functioning as a Minister. The criminal conspiracy alleged is that he sold electricity to an industry in the State of Karnataka 'without the consent of the Government of Kerala which is an illegal act' under the provisions of the Electricity (Supply) Act, 1948 and the Kerala Electricity Board Rules framed thereunder. The allegation is that he in pursuance of the said alleged conspiracy abused his official position and illegally sold certain units to the private industry in Bangalore (Karnataka) which profited the private industry to the tune of Rs.19,58,630.40 or more and it is, therefore, obvious that the criminal conspiracy alleged against the appellant is that while functioning as the Minister for Electricity he without the consent of the Government of Kerala supplied certain units of electricity to a private industry in Karnataka. Obviously, he did this in the discharge of his duties as a Minister. The allegation is that it was an illegal act inasmuch as the consent of the Government of Kerala was not obtained before this arrangement was entered into and the supply was effected. For that reason, it is said that he had committed an illegality and hence he was liable to be punished for criminal conspiracy under Section 120-B, I.P.C. It is, therefore, clear from the charge that the act alleged is directly and reasonably connected with his official duty as a Minister and would, therefore, attract the protection of Section 197 (1) of the Act.

18. In the judgment reported in 1979 (4) SCC 177 in the matter of B.Saha and others v. M.S.Kochar, it has been held as follows:-

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 wide 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 and the said provision." 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 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.

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

which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted.

19. In the judgments reported in AIR 2008 SUPREME COURT 1992, (2008) 11 Supreme Court Cases 289, and (2004) 2 Supreme Court Cases 349, the principles of law laid down in the judgment reported in 1979 (4) SCC 177 in the matter of B.Saha and others v. M.S.Kochar and also the judgment reported in AIR 1967 SC 776 in the matter of P.Arulswami v. State of Madras, were relied on.

20. In the judgment reported in AIR 1967 SC 776 in the matter of P.Arulswami v. State of Madras, it has been held as follows:-

"... It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable."

21. In the judgment reported in (1999) 5 Supreme Court Cases 690 in the matter of State of Kerala Versus V.Padmanabhan Nair, the Hon'ble Supreme Court relied on principles of law laid down in the judgment reported in (1972) 3 SCC 89 Harihar Prasad v. State of Bihar wherein it is held that while discharging his official duties, if the public servant enters into a criminal conspiracy or indulge in criminal misconduct, want of sanction under section 197 of the Code of Criminal Procedure is no bar to a prosecution under section 120B r/w 409 IPC.

22. In the judgment reported in (2007) 1 Supreme Court Cases 49 in the matter of *Lalu Prasad alias Lalu Prasad Yadav Versus State of Bihar* through CBI (AHD) Patna, the difference between the scope of section 197 Cr.P.C. and section 19 of the PC Act, was considered and held that both the sections operate in conceptually different fields and in a case relatable to section 197 Cr.P.C., the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus with the discharge of duties.

23. In the judgment reported in AIR 1966 Supreme Court 220 in the matter of *Baijnath vs. State of Madhya Pradesh*, it is held as follows:-

It is not every offence committed by a public servant that requires sanction for prosecution under S. 197(1) of the Criminal Procedure Code, nor every act done by him while he is actually engaged in the performance of his official duties; but where the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. What is important is the quality of the act and the protection contemplated by S. 197 of the Criminal P.C. will be attracted where the act falls within the scope and range of his official duties. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. If it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable.

24. Bearing these principles of law in mind, we will have to see whether the sanction is required for prosecuting the petitioner.

25. Admittedly, the petitioner was working as Deputy Commissioner of Labour and was the Commissioner for Workmen's Compensation. As stated supra, he did not take evidence and he delivered judgments after perusing the records and also disbursed the amounts. I have gone through the case records, namely, W.C.Nos.291 of 2002, 312 of 2002, 500 of 2003 and 541 of 2002. In respect of these cases, the prosecution was launched against the petitioner. It is seen from the case records that the photo of the claimant in W.C.No.291 of 2002, 312 of 2002, 500 of 2003 were not affixed in the claim petition. Therefore, in the absence of any photographs of the claimants in the claim petition and having regard

to the fact that the petitioner did not take evidence, can it be stated that the petitioner conspired with the other accused and created fraudulent records and disbursed the amounts to the persons other than the claimants. However, in the order passed by the petitioner, he has specifically mentioned that after seeing the claimants and after going through the records, he passed the awards. Therefore, the petitioner had an occasion to see the claimants at the time of passing the awards. It is also seen from the list of witnesses that the signatures found in the receipt for having received the draft by the claimants and also in the claim petition and the deposition were sent for expert opinion and expert gave opinion that the signatures differ. It is also seen from the file that office note was prepared to the effect that the amount can be paid to the claimants and pre-paid vouchers were obtained from the aforesaid three claimants. Therefore, even though the petitioner had an occasion to see the claimants before passing the award, as rightly submitted by the learned counsel for the petitioner while disbursing the amount, he would have been misled by the officials who placed the office note for having obtained receipt from the claimants and believing the same, the petitioner could have disbursed the drafts to the persons believing to be the claimants. It is also admitted that the receipts were attested by the advocates who were A.4 and A.5 who appeared for the claimants in the claim petition. Therefore, while discharging the dues as Commissioner of Compensation, the petitioner disbursed the amount to the persons who were not claimants and in my opinion, it may amount to the dereliction of duty on the part of the petitioner and we can see the petitioner could have been more vigilant in insisting on the identity of the persons who came forward to receive the drafts. In such circumstances, can it be said that the petitioner has acted beyond his official duty.

26. As stated earlier and as laid down by the Hon'ble Supreme Court whether the act complained of directly concerned with the official duties, then the sanction would be necessary. In the judgment reported in 1996 SC 901, Minister was charged with entering into criminal conspiracy with the co-accused while functioning as Minister. The allegation was that in pursuance of the said conspiracy, the

Minister abused the official position and illegally sold certain units to the private sector. It was argued that the Minister in the discharge of duties as Minister supplied unit to electricity to a private industry without getting consent from the Government and the Minister had only committed illegality and liable to be punishable for criminal conspiracy under section 120B IPC. The Hon'ble Supreme Court held that the act of the Minister is directly and reasonably connected with his official duty and therefore, he is entitled to the protection of section 197 Cr.P.C.,.

27. According to me, the act of disbursing the amount to the claimants is directly connected to the duties of Commissioner for Workmen's Compensation and in the discharge of such duty if he has disbursed the amount to a wrong person without verifying the identity of that person, it can only amount to dereliction of duty, for that a criminal prosecution cannot be initiated.

28. Even assuming that he has committed the criminal offence, the said offence was committed while discharging his duties as Commissioner for Workmen's Compensation and the act of disbursement of awards is part of the duty of the Commissioner for Workmen's Compensation and therefore, the sanction under section 197Cr.P.C., is required. Admittedly, the sanction was not obtained and therefore, the charge against the petitioner is liable to be quashed.

29. In respect of W.C.No.541 of 2002 is concerned, the photograph of the claimant is available in the case records. Therefore, the petitioner could have been vigilant in verifying the identity of the person who came forward to receive the drafts. The charge in that respect also will not succeed as the said Arun was not examined during examination and was not cited as a witness in the charge sheet.

30. Though the petitioner was charged under the Prevention of Corruption Act, there is no material available against the petitioner for having committed the criminal misconduct and when the petitioner cannot be prosecuted for IPC offences and sanction was not obtained, the petitioner cannot be prosecuted for offences under the Prevention of Corruption Act, having regard to the facts of this case.

31. In the result, the petition is allowed and the proceedings in Spl.C.C.No.97 of 2014 pending on the file of the Special Judge, (Special Court for Prevention of Corruption Act), Salem is quashed as against the petitioner.

asvm

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Special Judge,
(Special Court for
Prevention of Corruption Act),
Salem.

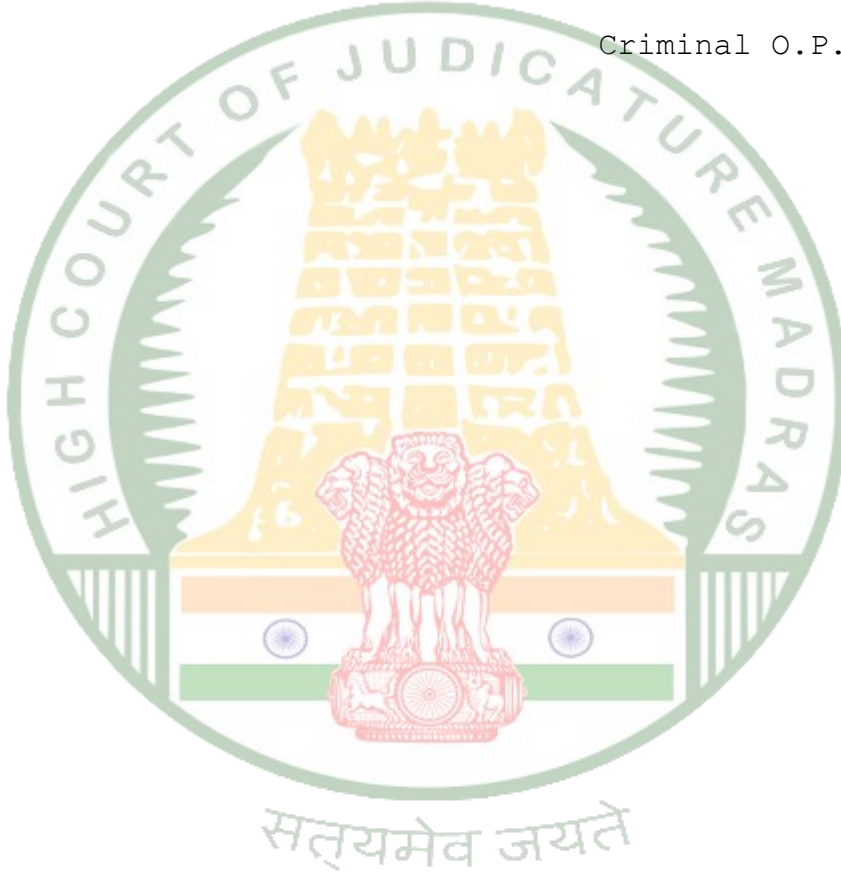
2. Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
(Crime No.3/2007/AC/SL/SLP/NAMAKKAL)

3. The Public Prosecutor,
High Court, Madras.

+ 2 ccs to M/s.Lakshmi Priya Associates, Advocate SR 18441

scd(co)
prk21/4

Criminal O.P.No.17327 of 2014



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