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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 02nd November, 2015

+ **CRL.M.C. No.4497/2015**

NISHA PRIYA BHATIA Petitioner

Represented by: In person.

Versus

SHASHI PRABHA & ANR Respondents

Represented by: NEMO.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A.No.16016-17/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the applications are allowed.

CRL.M.C. No.4497/2015

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner-in-person has assailed the orders dated 10.09.2015 passed by learned Additional Sessions Judge, Patiala House Courts, New Delhi in Criminal Revision No.18/2015 whereby upheld the judgment dated 28.04.2015 passed by learned Metropolitan Magistrate, Patiala House Courts, New Delhi in Criminal Complaint Case No.475/1/13 and declined to issue summons to respondents.

2. The petitioner submitted that both the aforesaid orders were passed on the ground that sanction under Section 197 Cr P C from the competent authority is not on the record. She submits that she applied for the said sanction on 10.02.2010, but till date there is no response from the competent authority.

3. Admittedly, the above noted criminal complaint case was filed on 07.09.2009 and the petitioner applied for permission/sanction on 10.02.2010, thus neither on the date of filing of above noted case nor till date the sanction under Section 197 of the Cr PC is on record.

4. As alleged in the complaint by petitioner that she was Class-I Officer in the Research and Analysis Wing (RAW) and was compulsory retired from service in view of the allegations made by her against two senior officers regarding her sexual harassment. It is alleged that in the year 2007 she was posted in RAW Headquarters, Delhi, as the then Joint Secretary and another senior officers tried to push her in sex racket being run in the office by some senior officers. The petitioner made complaint in this regard to the Prime Minister of India and thereafter, an enquiry committee was set up to enquire into the allegations of the petitioner. The respondents had prepared a false enquiry report knowingly and therefore, committed the offence punishable under Section 167 of the IPC. The respondents being the public servant were charged with the duty of preparation of the enquiry report; however they deliberately made a false report. The documents submitted by the petitioner were not considered and the report was prepared falsely and in connivance and collusion with two senior officers.

5. It is further stated in the complaint that the press note dated 19.08.2008 issued by the Press Information Bureau, Government of India, declaring the petitioner as a person of disturbed mind has been set aside by the Apex Court.

6. The petitioner examined herself as CW1 in pre-summoning evidence and thereafter closed the pre-summoning evidence.

7. For reference, Section 167 of the IPC is reproduced as under:-

“167. Public Servant framing an incorrect document with intent to cause injury –

Whoever, being a public servant, and being as [such public servant, charged with the preparation or translation of any document or electronic record, frames, Prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

8. The petitioner submitted before learned Trial Court and in this Court as well that there is no requirement of sanction in view of provision of Section 19 of the Central Civil Services (Conduct) Rules, 1964 and submitted that sanction is assumed to have been granted if not received within three months. Section 19 of the Central Civil Services (Conduct) Rules, 1964 reads as under:-

“19. Vindication of Acts and character of Government Servant:

(1) No Government servant shall, except with the previous sanction of the Government, have recourse to any Court or to the Press for the vindication of any official act which has been the subject-matter of

adverse criticism or an attack of a defamatory character.

Provided that if no such sanction is received by the Government servant within a period of 03 months from the date of receipt of his request by the Government, he shall be free to assume that the permission as sought for has been granted to him.

(2) Nothing in this rule shall be deemed to prohibit a Government servant from vindicating his private character or any act done by him in his private capacity and where any action for vindicating his private character or any act done by him in private capacity is taken, the Government servant shall submit a report to the prescribed authority regarding such action."

9. Both learned Courts below have dismissed the Complaint Case and Criminal Revision Petition filed by petitioner on the ground that sanction to prosecute under Section 197 Cr PC is not on the record.

10. The Section 197 Cr P C reads as under:-

"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, 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 while 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 of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

11. Perusal of the provision of Section 197 Cr P C clearly indicates that previous sanction is required for prosecuting only such public servant, who can be removed by sanction of the Government. Sanction under the aforesaid Section is required to the offences committed in course of discharge of official duty. When a public servant has allegedly committed the offence of cheating, criminal breach of trust and mis-appropriation / embezzlement, such offences cannot said to be committed by the public servant while acting or purported to act in discharge of official duty. Therefore, for such offences, sanction for prosecution is not necessary.

12. It is clear from the averments made in the instant petition and the complaint filed by her before learned Trial Court, she wants respondents to be summoned for the offence punishable under Section 167 of the IPC. Therefore, rule referred to by the petitioner are not applicable to the present case as the offence under Section 166/167 of the IPC has a direct nexus with commission of a criminal misconduct on the part of the public servant. Undisputedly, the respondents are government servant, who conducted the enquiry into the allegations made by the petitioner. The

allegations of the petitioner are that they prepared a false enquiry report knowingly. The petitioner could not succeed before learned Trial Court as well as learned Revisional Court.

13. This Court under Section 482 of the Cr PC has to see whether orders passed by both Courts below are illegal or perverse. The petitioner has failed to establish even duo.

14. The Apex Court in ***P.K.Chaudhary vs Commander, 48, BRTF(GREF), AIR 2008 SC 1937*** as well as in ***Anil Kumar vs M.K.Aiyappa & Another, 2013 (12) SCALE 283*** held that sanction is a pre-requisite for summoning of accused in criminal cases.

15. In view of the facts recorded above and the legal position, I am of the considered opinion that there is no illegality or perversity in the order passed by both the Courts below.

16. In view of above, instant petition is dismissed with no order as to cost.

17. Before parting with this order, it is worth to put on record that after hearing petitioner-in-person the moment, this Court started dictating order, she created scene in the Court room and did not allow the Court to dictate the order. Moreover, she removed her jacket in the Court. This is not her first attempt to create scene in the Court. Earlier also she unrobed her clothes before a Coordinate Bench of this Court and the Court put her to some terms. Therefore, just to avoid recurrence of such scene, she was taken out from the Court with the help of lady security personnel.

18. The petitioner is also an enrolled advocate. After seeing her previous conduct as well as today's conduct, I direct that she will not appear in person in this Court henceforth.

**SURESH KAIT
(JUDGE)**

NOVEMBER 02, 2015
M/RS