

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 627 OF 2016

1. Pramod Kumar Sharma, S/o Late Shri Rajaram Sharma, aged about 58 years, R/o Village- Jogi Dipa, P.S. Pamgarh, Distt. Janjgir-Champa (C.G.), presently posted as Chief Executive Officer, Zila Antyavasayi Sahkari Vikas Samiti Maryadit, District Raigarh (C.G.)

2. Ganga Prasad Tamrakar, S/o Late Saheb Lal, aged about 58 years, R/o Village- Jagmahant, P.S. Janjgir, District Janjgir-Champa (C.G.), presently posted as Executive Officer, Zila Antyavasayi Sahkari Vikas Samiti Maryadit, District Raipur (C.G.)

... Petitioners

Versus

State of Chhattisgarh, through District Magistrate, Ramanujganj, District Surguja (C.G.)

... Respondent

For Petitioners	:	Ms. Naushila Ali, Advocate.
For Respondent-State	:	Mr. O.P. Sahu, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/09/2016

1. The present petition under Section 482 of CrPC has been filed assailing the order dated 11.4.2016 passed by the Additional Judge to the Court of Additional Sessions Judge, Ramanujganj, District Surguja (Ambikapur) in Criminal Revision No. 10 of 2016. Vide the said order, the Revisional Court has rejected the revision petition thereby affirming the order dated 19.10.2015 passed by the Judicial Magistrate First Class, Rajpur, District Balrampur-Ramanujganj in Criminal Case No. 614 of 2013.

2. The relevant facts for the adjudication of the present petition are that the two Petitioners before this Court are presently working as the Chief Executive Officer and Executive Officer of Zila Antyavasai Shahkari Vikas Samiti Maryadit, Ambikapur, respectively. The incident in the instant case relates to the period of 1995 during which time the two Petitioners were working on the post of Executive Officer as well as Field Officer

respectively at the said Zila Antyavasai Shahkari Vikas Samiti Maryadit, Ambikapur. The case of the prosecution in brief is that in July, 1995 a loan was approved to be used as Taxi purpose. The loan application was made in the name of Kishunram, shown to be aged about 21 years, with a photograph also affixed therein and it is said that the application was moved by the other accused persons in the instant case, namely, Shambhunath, Shiva, Jage etc. Thereafter, the said loan papers were said to have been processed by the said Society where the Petitioner No.1 was working as Executive Officer and the Petitioner No.2 was working as the Field Officer. It is said that they had approved the said loan papers and forwarded the same for the release of the loan amount and accordingly an amount of Rs.2,20,766/- was ordered to be paid to the beneficiaries. Out of this amount, an amount of Rs.11,766/- was deposited by the beneficiaries. The remaining amount was to be repaid by the beneficiaries to the said Society in easy installments. Subsequently, there was a default on the part of the beneficiaries in making the repayment and accordingly after a notice was issued to the co-accused Shambhunath, notice was also issued to the other beneficiaries and it was also ordered for the confiscation of the jeep.

3. It is at this juncture that Kishunram, the person in whose name the loan was sanctioned, filed a complaint before the said Society on affidavit stating that he has never applied for any loan from the Society neither has he got any Jeep in his possession which is used as a Taxi. On the said affidavit of Kishunram, the Collector, Surguja ordered for an inquiry to be conducted by the Tehsildar. Later on, the Tehsildar is said to have submitted an inquiry report to the Collector informing that the entire loan transaction itself was a fake transaction as Kishunram was not the applicant nor was he the beneficiary but it appeared that the other accused persons are said to have manipulated the documents and records and

presented the application in the name of Kishunram. The Tehsildar also found that it is a case where the photograph in the application also was not that of Kishunram but was of one Bajar, the nephew of one of the accused Shambhunath. It was also found that the actual Kishunram was aged around more than 60 years whereas in the application for grant of loan the age was shown to be that of 21 years.

4. Based on the said inquiry report, the Collector thereafter wrote a letter to the Superintendent of Police, Surguja on 29.3.2004 to register an FIR and to proceed further. It is based on the said report of the Collector that an FIR was lodged against the accused persons involved in the transaction. Initially, the FIR was lodged only against the beneficiaries from the loan transaction but at the time of filing of charge-sheet the names of the other accused persons including the present Petitioners were also added. The matter was put to trial before the Judicial Magistrate First Class, Rajpur in Criminal Case No. 614 of 2013.

5. The Petitioners thereafter moved an application under Section 197 of CrPC stating that the initiation of the criminal prosecution against them is not proper as prior sanction was not obtained by the prosecution as is required under Section 197 of CrPC. According to the Petitioners, the alleged offence said to have been committed by them was an act in the discharge of their official duties and therefore the Court could not have taken cognizance of an offence against them without previous sanction from the appropriate Government and thus prayed for their discharge.

6. The Trial Court vide its order dated 19.10.2015 held that since the nature of the allegations leveled against the accused persons are that of an offence under Sections 420, 465, 468, 34 of IPC, there is no necessity of a previous sanction of the appropriate Government for prosecuting the Petitioners.

7. The said order dated 19.10.2015 of the learned Magistrate was put to challenge by way of a revision petition before the Additional Sessions Judge, Ramanujganj vide Criminal Revision No. 10 of 2016 and the said Revisional Court also vide the impugned order has rejected the revision petition holding it to be devoid of merits and that there is no illegality said to have been committed by the Trial Judge in rejecting the application under Section 197 of CrPC on 19.10.2015, leading to the filing of the present petition under Section 482 of CrPC.

8. Ms. Naushina Ali, learned Counsel for the Petitioners, submits that admittedly at the relevant point of time the Petitioners were posted at Zila Antyavasai Shahkari Vikas Samiti Maryadit, Ambikapur on the post of Executive Officer and Field Officer respectively. According to her, there is no role played whatsoever by them in the commission of the alleged offence. It is a case where a plain reading of the contents of the charge-sheet itself would reveal that in fact it is the other accused persons barring the beneficiaries who were the real culprits and who had got certain documents fraudulently prepared and then on the basis of the said fake and fraudulent documents moved the Society for grant of loan and which was processed at different levels and finally which was placed for approval/sanction before the Petitioners and all that the Petitioners have done is what they otherwise are legally supposed to do in exercise of the powers which have been otherwise conferred upon them.

9. According to the learned Counsel for the Petitioners, since the other accused persons have got the necessary documents prepared at the level of the Naib Tehsildar and Tehsildar i.e., in obtaining the income certificate, caste certificate and other certificate in proof of residence etc., from the office of Naib Tehsildar and Tehsildar which were the required documents for grant of loan. That after these papers were obtained by the

beneficiaries and attached along with the application seeking grant of loan, the Petitioners had no other option but to complete the process by grant of necessary approval/sanction. As such the Petitioners cannot be implicated in the said offences. It was also contended that since the nature of allegation clearly depicts the Petitioners to have discharged their official duties while granting loan it was necessary for the prosecution to have obtained previous sanction from the appropriate Government before prosecuting them. According to the learned Counsel for the Petitioners, this aspect has not been properly appreciated by the two Courts below and therefore the same deserves to be quashed and it was further prayed that since there is no malafide intention proved by the prosecution on the part of the Petitioners they are liable to be discharged from the criminal case without further being prosecuted.

10. Learned Counsel for the Petitioners further submitted that it is also a case where no loss has been caused to the Society by virtue of the alleged fraudulent transaction as a major portion of the amount was already been repaid by the beneficiaries and in due course of time the vehicle was also confiscated and thus the loss has been made up. Learned Counsel for the Petitioners in support of her contentions has relied upon the judgments of the Supreme Court rendered in the cases of **Ajay Mitra Vs. State of M.P. and Others** [2003 (3) SCC 11], **Indian Oil Corpn. Vs. NEPC India Ltd. and Others** [2006 (6) SCC 736], **Zandu Pharmaceutical Works Ltd., and Others Vs. Mohd. Sharaful Haque and Another** [2005 (1) SCC 122], **D.T. Virupakshappa Vs. C. Subash** [2015 (12) SCC 231] and **N.K. Ganguly Vs. CBI** [2016 (2) SCC 143] and relying upon these judgments has prayed for quashment of the two orders i.e., the order dated 11.4.2016 passed by the Additional Sessions Judge in Criminal Revision No. 10 of 2016 and the order dated 19.10.2015 passed by the Judicial Magistrate First Class in

Criminal Case No. 614 of 2013 and in addition sought for quashment of the entire criminal prosecution so far as the Petitioners are concerned.

11. Shri O.P. Sahu, learned Counsel for the State, however opposing the petition submits that from the admitted facts which have come up before the investigating agency at the time of filing of charge-sheet there is sufficient material for the prosecution to have initiated the case against the Petitioners and the present petition sans substance and therefore deserves to be rejected. According to the State Counsel, the primary objection raised by the Petitioners leading to the impugned orders dated 19.10.2015 and 11.4.2016 is the previous sanction from the appropriate Government not obtained by the prosecution. According to him, the nature of offence which has been detected and which is said to have been committed by the accused persons is what which has to be seen first before going into the aspect of whether previous sanction was necessary or not.

12. As per the State Counsel, the admitted position in the instant case is that both the Petitioners being posted at Zila Antyavasai Shahkari Vikas Samiti Maryadit, Ambikapur during the relevant period of time. It is also not in dispute that the loan papers were processed by Petitioner No.2 in the capacity of Field Officer and subsequently he had placed the file for approval before Petitioner No.1 who was the Executive Officer of the said Society. It is also an admitted position that the loan amount was sanctioned to the beneficiaries only after the loan papers were processed, approved and sanctioned by the present Petitioners. These acts on the part of the two Petitioners are prima facie sufficient to establish an offence against them. It was further contended by the State Counsel that it is a case where the beneficiaries is said to have cheated the State by creating false, fabricated and fake documents and secondly impersonating the actual

beneficiary himself inasmuch as the loan papers were obtained in the name of Kishunram whereas the photograph, the thumb impression and the details of Kishunram were wrongly mentioned and instead of Kishunram a fake person namely Bajar's photograph and thumb impression was used projecting him as Kishunram. According to the State Counsel, these were the aspects which ought to have been scrutinized strictly by the officers of the Society before processing and sanctioning the loan and having not done so, the role of the Petitioners gives rise to suspicion. The said act by the Petitioners is in fact the overt-act on their part sufficient for prosecuting them for the offence under Sections 420, 465, 468, 34 of IPC.

13. According to the learned Counsel for the State, since it is a case of cheating and fraud committed by the beneficiaries and the papers having been processed and approved by the Petitioners, their role in the commission of cheating and fraud cannot be brushed aside without permitting the prosecution to substantiate these charges and since the allegations are that of cheating and fraud the requirement of compliance of Section 197 of CrPC does not arise at all. In support of his contentions, the State Counsel has also relied upon the judgment of the Supreme Court reported in AIR 2015 SCW 3282 (**Inspector of Police and Another Vs. Battenapatla Venkata Ratnam and Another**).

14. Having considered the rival contentions put forth on behalf of either side what is clearly reflected from the charge-sheet is that the alleged transaction took place during the time when the two Petitioners were discharging the duties of Executive Officer and Field Officer of Zila Antyavasai Shahkari Vikas Samiti Maryadit, Ambikapur respectively. It is also clearly reflected that the entire documents produced for the purpose of grant of loan in the name of Kishunram were false, fabricated and fake.

It is also evident that the loan obtained in the name of Kishunram was by projecting one Bajarū as Kishunram and thus there also is a case of impersonation on the part of the accused persons. Further it reflects that the loan amount had been released to the beneficiaries only after the loan papers were processed, forwarded and finally approved and sanctioned by the Petitioners. Without the papers being processed and necessary approval and sanction being granted by the Petitioners, the beneficiaries could not have obtained the loan. Thus, there is a clear case of cheating and fraud prima facie made out in the commission of the offence.

15. Now, whether the Petitioners do have any role in the entire commission of offence is a matter of evidence. So far as the overt-act on the part of the Petitioners is concerned, undoubtedly the loan amount has been sanctioned only after the papers were processed and sanctioned by the two Petitioners. Whether there was a mens rea on the part of the Petitioners in the commission of the alleged offence is a matter of evidence which cannot be looked into at the stage of filing of charge-sheet.

16. So far as the requirement of previous sanction by the State Government is concerned, the offences which have been charged against the Petitioners are under the provisions of Indian Penal Code and the Supreme Court in more than a couple of decisions has held that an act of cheating and fraud can never be brought within the ambit of discharging of official duty. Once when the allegation is that of cheating and fraud, the same cannot be termed to have been committed in the course of discharge of official duties. Since the act of cheating and committing fraud does not fall within the category of an act in the course of discharge of official duty, at the first instance, the requirement of sanction under Section 197 of CrPC itself would not be required.

17. In this regard, the Supreme Court recently in the case of **Rajib Ranjan and Others Vs. R. Vijaykumar** [2015 (1) SCC 513] in paragraphs 16 & 18 has held as under:

“16.To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, nor bar.

18. The ratio of the aforesaid cases, which is clearly discernible, is that even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted.”

18. Again in the case of *Inspector of Police v. Battenapatla Venkata Ratnam* (supra), the Supreme Court in paragraph 11 has held that:

“11. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue. Unfortunately, the High Court missed these crucial aspects. The learned Magistrate has correctly taken the view that if at all the said view of sanction is to be considered, it could be done at the stage of trial only.”

19. This Court in one of its recent decisions passed in Cr.M.P. No. 783 of 2016, dated 29.07.2016 in the case of **S.N. Ram v. State of Chhattisgarh** relying upon the above two referred decisions of the Supreme Court has already held that in a case of cheating and fraud, previous sanction under Section 197 CrPC would not be necessary. In case of requirement of sanction under Section 197 CrPC two conditions are sine qua non (1) that the public servant is only removable from the office by the State Government or with the sanction of the State Government and (2) that he has committed the alleged act in discharging or purporting to discharge of his official duty.

20. The act of criminal misappropriation of money is not an official act but occupying the office only facilitated the commission of crime of such nature. The criminal misappropriation of money or property is not a public duty therefore, no sanction for the prosecution of the offence punishable under Sections 420, 465, 468, 34 of IPC is necessary likewise tampering or interpolation or cheating does not fall within the ambit of public duty or official duty therefore no sanction is necessary for the offence punishable for an act of cheating or fraud.

21. In the instant case, according to material collected on behalf of the prosecution, the Petitioners were required to discharge the entrustment of duty in accordance with the procedure prescribed but instead of complying the procedure, the Petitioners along with the other co-accused persons is alleged to have forged the documents and used the same as genuine and disbursed the money. The offence of forgery, cheating and criminal misappropriation is not a public duty, therefore, no such sanction is necessary under Section 197 of CrPC.

22. So far as the paragraph-8 of **Zandu Pharmaceuticals Works Ltd.,** (*supra*) which has been cited and heavily relied upon by the Counsel for the Petitioners is concerned, there can be no quarrel in respect of principles and the ratio of law laid down in the said judgment. If we consider the three circumstances enunciated in the said paragraph, what is clearly reflected is that the said circumstances would be applicable in cases where taking the entire materials available in the charge-sheet as it is without adding or subtracting anything it would be difficult to trace the overt-act or role played by the person who has been made accused. Whereas, in the instant case, there is an admitted factual position of the loan having been processed and sanctioned by the Petitioners and, thus, the case is factually distinguishable.

23. As regards the case of **D.T. Virupakshappa** (*supra*) is concerned, the said judgment also is distinguishable on its facts as the said judgment was passed in the context of not obtaining sanction before prosecuting the petitioner therein for an alleged offence of police atrocities committed in the course of discharge of duties i.e., in the course of interrogation of a suspect taken into custody in connection of a murder. Therefore, the alleged conduct of interrogation was initially in connection with discharge of his official duty. Whereas, in the instant case the offence is that of impersonation and fake and fabricated documents used while granting loan.

24. Likewise, the other judgments cited by the Counsel for the Petitioners that of **N.K. Ganguly** (*supra*), **Ajay Mitra** (*supra*) and **Indian Oil Corporation** (*supra*) are all also cases which are distinguishable on its facts itself.

25. It would be relevant at this juncture to rely upon the principles laid down by the Supreme Court in case of **Indian Oil Corporation** (*supra*) wherein the Supreme Court in a very categorical term has held that if allegations in the complaint taken at their face value discloses a criminal offence, the complaint cannot be quashed. It has further enunciated that the power to quash the complaint shall not however be used to stifle or scuttle legitimate prosecution. In the said judgment, the Supreme Court has also while laying down the principles, reiterated the fact that in a proceeding seeking quashment of complaint, neither detailed enquiry nor a meticulous approach in respect of the material nor an assumption of the reliability or genuineness of the allegations in the complaint is warranted while examining the prayer for quashment of compliant.

26. If we take the facts of the instant case and reliability to the principles laid down in case of **Indian Oil Corporation** (*supra*), it would clearly reflect that *prima facie* the prosecution has been able to establish the commission of offence inasmuch as there is an admission on either side of a fact prosecution being made and on the basis of said transaction a loan was sanctioned. The petitioner who had obtained the loan got it by using fake and fabricated document and also by way of impersonating himself. Thus, all those judgments which have been relied by the Petitioners are distinguishable in the peculiar facts of the present case and would therefore not come in aid of the Petitioners.

27. For the foregoing reasons and keeping in view the law laid down by the Supreme Court, this Court is of the opinion that there is no illegality or infirmity committed by the two Courts below firstly while rejecting the application under Section 197 of CrPC and subsequently while rejecting the revision petition.

28. The petition accordingly fails and is dismissed.

Sd/-
(P. Sam Koshy)
Judge