

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 489 OF 2007

Nitin s/o Sheshrao Datal,
Age. 42 years, Occ. Service as
Child Development Officer,
Integrity Child Development Scheme,
Chakur, R/o. Chakur, Tq. Chakur,
Dist. Latur.

...Petitioner

versus

1. Parvati w/o Shankar Somwanshi,
Age. 35 years, Occ. Household,
R/o. Jai Bhavani Galli, Chakur,
Tq. Chakur, Dist. Latur
2. State of Maharashtra,
Through Police Station, Chakur,
Tq. Chakur, Dist. Latur.

...Respondents

WITH
CRIMINAL WRIT PETITION NO. 495 OF 2007

1. Mrs. Manisha w/o Shivkumar Ghalapure,
Age. 20 years, Occ. Service,
R/o. Azad Chowk, Chakur,
Taluka Chakur, District Latur
2. Mrs. Mahananda w/o Sambling Ghalapure,
Age. 45 years, Occ. Household,
R/o. As above.

...Petitioner

versus

1. Parvati w/o Shankar Somwanshi,
Age. 35 years, Occ. Household,
R/o. Jai Bhavani Galli, Chakur,
Tq. Chakur, Dist. Latur

- 2 State of Maharashtra,
Through Police Station, Chakur,
Tq. Chakur, Dist. Latur. ...Respondents

WITH
CRIMINAL WRIT PETITION NO. 535 OF 2007

Sopan s/o Gangaramji Dal,
Age. 40 years, Occ. Service,
R/o. Sarda nagar, Parbhani,
Tq. and Dist. Parbhani. ...Petitioner

versus

1. Parvati w/o Shankar Somwanshi,
Age. 35 years, Occ. Household,
R/o. Jai Bhavani Galli, Chakur,
Tq. Chakur, Dist. Latur
- 2 State of Maharashtra,
Through Police Station, Chakur,
Tq. Chakur, Dist. Latur. ...Respondents

...

Advocate for Petitioner: Shri S C Swami h/f Shri V D Gunale
Advocate for Respondent No. 1: Mr V P Golegaonkar
APP for Respondent No.2-State : Mr S P Tiwari

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CORAM : V. K. JADHAV, J.

**Date of Reserving
the Order : 19.12.2016**

**Date of pronouncing
the Order: 23.12.2016**

JUDGMENT:-

1. Being aggrieved by the order dated 26.7.2007, passed by the
learned Judicial Magistrate, First Class, Chakur, in Criminal Case No.

124 of 2007, passed under section 156(3) of Cr.P.C. thereby directing investigation to the police station, at Chakur and submit a report within two months from the date of receipt of order, original accused No.5 has preferred criminal writ petition No. 489 of 2007, original accused Nos. 1 and 2 preferred criminal writ petition No. 495 of 2007 and original accused No.3 has preferred criminal writ petition No. 535 of 2007.

2. Brief facts giving rise to the present criminal writ petitions, are as follows:-

a) Respondent No.1 original complainant has filed a private complaint before the J.M.F.C. Chakur, bearing R.C.C. No. 124 of 2007, against the petitioners accused for having committed offences punishable under Sections 471, 420, 418, 465, 466, 467 r.w. 34 of I.P.C. It has alleged in the complaint that accused Nos. 1 and 2 in the complaint are daughter-in-law and mother-in-law, interse, and accused No.2 is ex-member of the Zilla Parishad. Accused No.2 was working as Zilla Parishad member at the relevant time. It has further alleged in the complaint that accused No.1 obtained such documents and certificates and thereby succeeded in obtaining appointment order as an Anganwadi Karyakarti, by managing the selection committee.

b) On 14.11.2005, an advertisement came to be issued by Child Development Project Officer, Ahmedpur, Tq. Ahmedpur, District Latur, thereby inviting applications for the post of Anganwadi Karyakarti/Anganwadi Madatnis. In the said advertisement, certain eligibility criteria was fixed for the desirous candidates, such as (i) applicant must be permanent resident of Anganwadi area, (ii) the applicant must be between the age of 18 to 44 years as on 30.11.2005 and (iii) the applicant must have passed 8th standard examination etc. The complainant was fulfilling the aforesaid eligibility criteria and accordingly applied for the post of Anganwadi Karyakarti. It has further alleged in the complaint that the accused No.1 managed to obtain the appointment order in her favour as Anganwadi Karyakarti in connivance with the Gram Sevak, Gram Panchayat office, Sadegaon, Tq. and Dist. Parbhani, Gram Sevak Gram Panchayat Office, Chakur and the Child Development Officer, Chakur. It has also alleged in the complaint that for obtaining the said appointment order, accused No.1 has submitted false documents so as to fulfill the eligibility criteria in respect of her age, marital status and place of residence etc. It has also alleged in the complaint that accused No.2 by misusing her position, succeeded to obtain the appointment order in favour of accused No.1 on the post of Anganwadi Karyakarti. It has also alleged in the complaint that the

accused No.1 has not completed her 18 years of age at the time of filing application. Respondent No.1 complainant had made complaint before the higher authorities as well as with the police at Chakur. However, the police at Chakur did not accept the complaint. The respondent complainant therefore filed complaint before the learned Magistrate, Chakur.

c) The learned J.M.F.C. Chakur, heard the counsel for the respondent complainant, perused the complaint and the documents filed on record and observed that the offences alleged are cognizable and the investigation through the police is necessary. Thus, the learned J.M.F.C. Chakur, by impugned order dated 26.7.2007, directed to send the copy of complaint to the police station, Chakur for registration of the case and further directed the police at Chakur to make investigation in the case, under Section 156(3) of Cr.P.C. and to submit a report within two months from the date of receipt of the said order. The learned Magistrate, has further directed to send the copies of documents to the police station.

3. Learned counsel for the petitioners in all these writ petitions, submits that the petitioner in writ petition No. 489 of 2007 and petitioner in writ petition No. 535 of 2007 are the public servants and were acting in discharge of their duties in respect of which the

offence is alleged. Learned counsel further submits that the selection committee constituted for the selection of Anganwadi Karyakarti/Anganwadi Madatnis is consisting of 8 members, those are (i) Member of Legislative Assembly of concerned constituency, (ii) Member of Panchayat Samiti (Women), (iii) Sabhapati, Mahila Bal Kalyan, Zilla Parishad, (iv) Taluka Health Officer, (v) Block Development Officer, (vi) Child Development Project Officer (Member Secretary), (vii) Zilla Mahila Child Development Officer and (viii) Special District Social Welfare Officer. Learned counsel submits that the said committee, after considering the eligibility criteria and on verifying the record, selected accused No.1 for the said post. The petitioner in criminal writ petition No. 489 of 2007 being Member Secretary of the selection committee has taken care while verifying the documents of the candidates applied for the said post. The petitioner himself is not supposed to select the candidates for the said post. Learned counsel submits that in pursuance to the advertisement dated 14.11.2005, the procedure, as contemplated in the relevant Government Resolution is duly followed and the minutes of the meeting held on 15.4.2006 was also prepared. Learned counsel submits that as per the proclamation issued by the Child Development Officer, Ahmedpur, the age of the candidate on the date of appointment should be between 18 to 44 years. The learned Magistrate ought to have seen that the age of the selected candidate

is more than 18 years on the date of appointment. At the time of appointment of accused No.1, all original documents were verified and considering the date of birth, as recorded in the original certificate, accused No.1 was selected.

4. Learned counsel for the petitioners submits that as far as the petitioners in criminal writ petition No. 489 of 2007 and writ petition No. 535 of 2007 are concerned, prior sanction, as contemplated under section 197 of Cr.P.C., ought to have been obtained before directing investigation as provided under section 156(3) of Cr.P.C. The question of sanction is paramount importance for protecting the public servant, who has acted in good faith while performing his official duty. This requirement of sanction is precondition for ordering investigation under Section 156(3) of Cr.P.C., even at pre-cognizance stage. Learned counsel submits that the learned Magistrate has not applied his mind and mechanically directed the police to carry out investigation by registration of crime on the basis of the complaint filed before the Court.

5. Learned counsel submits that the petitioner original accused No.1 has not submitted any false or fabricated documents before the selection committee. The learned counsel has pointed out the documents, such as copies of proclamation issued by the Child

Development Officer, Integrated Child Development Scheme, Chakur regrading inviting applications for the post of Anganwadi Karyakarti/Anganwadi Madatnis, a chart indicating the marks given to the respective candidates by the selection committee, the chart obtaining information of the candidates appearing in the interview and the copy of the order issued in favour of the petitioner original accused No.1, dated 15.5.2006 and submits that the aforesaid documents demonstrate that the allegations made in the complaint are absurd, preposterous or concocted. The petitioner accused No.1 came to be selected on the post of Anganwadi Karyakarti as per her merit.

6. The learned counsel for the petitioners submits that the respondent original complainant has already taken recourse to the provisions of Government Resolution dated 13.8.2014 and preferred appeal with the same allegations about the faulty recruitment process against the Chief Development Officer, Integrated Child development Scheme, Panchayat Samiti, Chakur, Tq. Chakur, District Latur and the petitioner original accused No.1, before the Divisional Commissioner, Aurangabad Division, Aurangabad and the said appeal is pending for consideration.

7. Learned counsel for the petitioners in order to substantiate his

contentions, placed reliance on the judgments in the following cases:-

- I) Anil Kumar and others vs. M.K. Aiyappa and others, reported in 2013 (10) SCC 705,
- ii) Dr. Subramanian Swamy vs. Dr. Manmohan Singh and another, reported in 2012 (3) SCC 64,
- iii) General Officer Commanding vs. C.B.I. and another, reported in 2012 (2) BCR (Cri.) 623,
- iv) State of Uttar Pradesh vs. Paras Nath Singh, reported in 2009 (6) SCC 372.
- v) Shaikh Shakil Ibrahim and others vs. State of Maharashtra and another, decided by this Court dated 23.11.2016 in criminal application No. 1366 of 2005.

8. Learned counsel for respondent No.1 original complainant submits that in the advertisement dated 14.11.2005, certain eligibility criteria was fixed for the desirous candidates, however, though petitioner No.1 in criminal writ petition No. 495 of 2007 had not fulfilled the eligibility criteria, in respect of her age, marital status and place of residence, her application was accepted and further she was appointed as an Anganwadi Karyakarti for Chakur. The petitioner in writ petition No. 489 of 2007, who was then Child Development

officer had played important role and in collusion with other accused persons, facilitated the said illegal appointment. In the advertisement dated 14.11.2005, clause 2 of the advertisement was framed in such a manner so as to accommodate petitioner No.1 in criminal writ petition No. 495 of 2007. Even though the petitioner Manisha was less than 18 years of age, the said clause No.2 indicates that the applicant must be in between 18 to 44 years of age on the date of appointment. The said clause was inserted only in respect of advertisement for Chakur, Tq. Chakur, District Latur and this clause does not find place in the similar advertisements, pertaining to other districts. The petitioner Manisha has prepared false and bogus certificates about her age, martial status and her residence to become eligible and for being considered to be appointed as Anganwadi Karyakarti for village Chakur. Learned counsel submits that the petitioners in writ petition No. 495 of 2007 are closely related to each other, as they are daughter-in-law and mother-in-law, *interse*. The petitioner No.2 Smt. Mahananda Ghalapure, who is original accused No.2, was Ex-Member of the Zilla Parishad and thus, the petitioner Manisha-original accused No.1 obtained the said documents and certificates and accordingly succeeded in obtaining the appointment order.

9. Learned counsel for respondent No.1 submits that the act

complained is not a part of official duty to be performed by the petitioner in writ petition No. 489 of 2007 and 535 of 2007. The learned Magistrate has directed investigation as provided under Section 156(3) of Cr.P.C. and it is pre-cognizance stage and thus, the point of sanction, as provided under Section 197 of Cr.P.C. is not required to be considered at this stage. The probable defence of the accused is not required to be considered at this stage and the documents, relied upon by the petitioners accused in their defence, may not be relied upon at this stage. There is no reasonable nexus between the commission of offence and the discharge of official duty and therefore, question of invoking Section 197 of Cr.P.C. does not arise. Learned counsel submits that the respondent original complainant has preferred an appeal before the Divisional Commissioner, Aurangabad Division, Aurangabad and submitted before the authorities the genuine documents as against the false documents produced by the petitioner Manisha, during the aforesaid recruitment process and secured the appointment in collusion with other petitioners-accused.

10. Learned counsel for the respondent-original complainant, in order to substantiate his submissions, placed reliance on the following cases:-

- I) Mahesh Chaudhary vs. State of Rajasthan and another, reported in (2009) 4 SCC 439,
- ii) Punjab State Warehousing Corporation vs. Bhushan Chander and Anr. reported in 2015 SCC (On line) SC 632,
- iii) Raghunath Anant Govilkar vs. State of Maharashtra and others, reported in (2008) 11 SCC 289 and
- iv) State of Uttar Pradesh vs. Paras Nath Singh, reported in (2009) 6 SCC 372

11. I have also heard the learned A.P.P. for the respondent-State.

12. On careful perusal of advertisement dated 14.11.2005, it appears that certain eligibility criteria is mentioned in the advertisement for desirous candidates and the prominent amongst them are that (i) applicant must be permanent resident of Anganwadi area, (ii) the applicant must be between the age of 18 to 44 years as on 30.11.2005 and (iii) the applicant must have passed 8th standard examination etc. A reference of letter dated 28.10.2005, issued by the Chief Executive Officer, Zilla Parishad, Latur is given in the said advertisement and it appears that the advertisement has been published inviting applications from the eligible candidates in terms of the said letter.

13. The respondent original complainant has alleged that the petitioner-accused Manisha has submitted false documents in respect of her age, marital status and place of residence so as to fulfill the eligibility criteria. It has also alleged that even though the petitioner Manisha was below the age of 18 years, her application was considered with the aid of clause 2 of the said advertisement. Learned counsel for the respondent complainant has vehemently submitted that the said clause 2 was inserted in the advertisement to accommodate the petitioner Manisha and no such clause was appearing in the similar advertisements published in other districts. Learned counsel for the respondent complainant however, failed to place on record any document thereby indicating that such clause was not appearing in the advertisements inviting applications for similar post in other districts.

14. Learned counsel for the petitioner in writ petition No. 489 of 2007 submits that there was selection committee constituted for selection of Anganwadi Karyakarti consisting of eight members, those are (i) Member of Legislative Assembly of concerned constituency, (ii) member of Panchayat Samiti (Women), (iii) Sabhapati, Mahila Bal Kalyan, Zilla Parishad, (iv) Taluka Health Officer, (v) Block Development Officer, (vi) Child Development

Project Officer (Member Secretary), (vii) Zilla Mahila Child Development Officer and (viii) Special District Social Welfare Officer. The petitioner in writ petition No. 489 of 2007 has also produced on record the list of members of the selection committee present for conducting interview of the eligible candidates and also produced on record the minutes of meeting of said selection committee recorded after interview process was over. The petitioner accused in writ petition No. 489 of 2007 has also produced on record a chart of eligible candidates appeared for the post of Anganwadi Karyakarti for village Chakur and the marks allotted to them by the respective members of selection committee. The petitioner accused has also produced on record the appointment order issued in favour of the petitioner Manisha on 15.5.2006. Learned counsel for the respondent complainant has vehemently submits that the Court can not look into the material produced by the defence at this stage and same can be considered during the course of trial.

15. In the case of ***Rukmini Narvekar v. Vijaya Satardekar and others, reported in AIR 2009 SC 1013***, in para 9 and 29 of the judgment, the Supreme court has made following observations:-

Per Altamas Kabir, J.:-

“9. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his

behalf at the stage of framing of charge and only such material as are indicated in Section 227 Cr.P.C. can be taken into consideration by the learned Magistrate at that stage. However, in a proceeding taken therefrom under Section 482 Cr.P.C. the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi's case (supra) by the larger Bench to which the very same question had been referred."

Per Markandey Katju, J. :-

"29. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted."

16. In the case of ***Mahesh Chaudhary vs. State of Rajasthan and another (supra)***, it is observed that the documents relied on by the accused in their defence may not be relied on except in very exceptional circumstances.

17. In the case of ***Harshendra Kumar D. Vs. Rebatilata Koley and others, reported in (2011) 3 SCC 351***, the Supreme Court in para 25 of the judgment has made following observations:-

“25. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents – which are beyond suspicion or doubt – placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.”

It is thus clear that in appropriate case, if on the face of the documents – which are beyond suspicion or doubt – placed by the accused, the accusations against him cannot stand, it would be

travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court.

18. In the case of ***D.T. Virupakshappa Vs. C. Subhash, reported in (2015) 12 SCC 231***, the Supreme Court in para 6 of the said judgment has referred the case of ***Omprakash and others vs. State of Jharkhand, through the Secretary, Department of Home, Ranchi 1 and another*** and quoted paragraphs 32 and 41 of the said judgment, which read as under:-

“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). 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). 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. (Emphasis supplied)

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. ...”

19. In the above cited case, the question of sanction whether is necessary or not arise at the inception and there were unimpeachable circumstances on record, which may establish at the outset that the public servant was acting in performance of his official duty and is thus entitled to protection given under Section 197 of Cr.P.C. It has also observed in the said case by the Supreme Court that it is not possible for the Court 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.

20. In the instant case, on perusal of the documents, as referred to in the foregoing paragraphs, produced by the petitioners-accused, it appears that there is reasonable nexus between the act complained against the petitioners in writ petition Nos. 489 of 2007 and the writ petition No. 535 of 2007 and the official duties performed by them as the public servants. On perusal of the consolidated mark sheet of the eligible candidates, being interviewed by the selection committee and the marks allotted to them by each and every member of the selection committee, it appears that the candidates, who secured highest marks seems to have been given the appointments. Furthermore, it also appears that besides the petitioner Manisha, the other candidates, less than 18 years of age, are also considered and accordingly interviewed.

21. Needless to say that the Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190 of Cr.P.C. may direct investigation under Section 156(3) of Cr.P.C. The Magistrate, who is empowered under Section 190 to take cognizance alone, has power to refer the private complaint to police station under Section 156(3) of Cr.P.C. In the above mentioned legal situation, whether requirement of sanction, as contemplated under Section 197 of Cr.P.C. is precondition or not, for

ordering investigation under Section 156(3) of Cr.P.C., even at pre cognizance stage, is a question raised by learned counsel for the respondent original complainant. In the case of **Anil Kumar and others vs. M.K. Aiyappa and another (supra)**, in para 13 of the judgment, the Supreme Court has made the following observations:-

“13. Learned senior counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to herein above, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh and Subramaniam Swamy cases (supra).”

In this case, the Supreme Court has given reference to its earlier judgments rendered in the following cases (i) Dr. Subramanian Swamy vs. Dr. Manmohan Singh and another (supra), (ii) General Officer Commanding vs. C.B.I. and another (supra) and (iii) State of Uttar Pradesh vs. Paras Nath Singh (supra).

22. In the case of State of ***Uttar Pradesh vs. Paras Nath Singh*** (*supra*) the Supreme Court in para 6 of the judgment has made the following observations:-

“6.And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, ‘no court shall take cognizance of such offence except with the previous sanction’. 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. According to Black’s Law Dictionary the word ‘cognizance’ means ‘jurisdiction’ or ‘the exercise of jurisdiction’ or ‘power to try and determine causes’. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it 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.”

23. In the case of ***General Officer Commanding vs. C.B.I. and another (supra)***, the issue of sanction is summarized to the effect that the question of sanction is of paramount importance for protecting the public servant, who has acted in good faith while performing his duty, in order that the public servant may not be unnecessarily harassed on a complaint of unscrupulous person. It is obligatory on the part of the executive authority to protect him. If the law required sanction, and the court proceeds against the public servant without sanction, the public servant has a right to raise the issue of jurisdiction as entire action may be rendered void ab-initio.

24. On careful perusal of the complaint, I find that the allegations have been made against petitioner Manisha and her mother-in-law i.e. the petitioner No.2 in writ petition No. 495 of 2007. It has also alleged in the complaint that the petitioner Manisha has prepared false documents in respect of her age, marital status and the place of residence, to fulfill the eligibility criteria. The learned counsel for the respondent original complainant has preferred an appeal before the Divisional Commissioner, Aurangabad and same is pending. It has been pointed out in the said appeal that the genuine documents pertaining to the age, marital status and residence of the petitioner-accused Manisha, un-mistakenly point out that she has secured the

said appointment by submitting false documents during the recruitment process. Thus, the allegations made as against the petitioners in criminal writ petition No. 495 of 2007 certainly require investigation as directed by the Magistrate under the provisions of section 156 (3) of Cr.P.C. However, I find reasonable nexus between the act complained against the petitioners in writ petition No. 489 of 2007 and 535 of 2007 and discharging of their official duties. Both the petitioners are therefore entitled for the protection, as provided under Section 197 of Cr.P.C.

25. On careful consideration of the cases relied upon by the learned counsel for the respondent-original complainant, it appears that with regard to the facts and circumstances of those cases, it is observed that there is no reasonable connection between commission of offence and discharge of official duty.

26. In the case of ***Punjab State Warehousing Corporation vs. Bhushan Chander and another (supra)***, relied upon by learned counsel by the respondent-original complainant, the Supreme Court observed that no official can put forth a claim that breach of trust is connected with his official duty. Therefore, no sanction is needed to launch the prosecution for the offence punishable under Section 409 of I.P.C. In the facts of the said case, the Supreme Court has made

the observations by considering the charges levelled against the accused in that case.

27. In view of the above discussion and the ratio laid down by the Supreme Court in the various cases, as referred above, I proceed to pass the following order:-

O R D E R

- I. Criminal writ petition No. 489 of 2007 and criminal writ petition No. 535 of 2007 are hereby allowed in terms of prayer clauses "C" therein. Rule made absolute in the said writ petitions.
- II. Criminal writ petition No. 495 of 2007 is hereby dismissed. Rule discharged in the said writ petition.
- III. Criminal writ petitions are accordingly disposed of.

(V. K. JADHAV, J.)