

***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**
+ CRIMINAL PETITION No.4319 of 2015

% Dated 28.01.2016

Between:

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S.Bala Krishna

...Petitioner/Accused

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and

\$ The State of Telangana

Rep.by its Public Prosecutor

High Court, Hyderabad and anotherRespondents

! Counsel for the petitioner : M/s K.R.Koteswara Rao

^ Counsel for respondent No.1 : Public Prosecutor

Counsel for respondent No.2 : G.Tirupati Reddy

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? Cases referred: :

1. AIR 2001 SC 2547
2. AIR 1939 FC 43
3. AIR 1948 PC 128
4. AIR 1955SC 309
5. AIR 1955 SC 287
6. AIR 1956 SC 44
7. AIR 1957 SC 458
8. AIR 1979 (0) 1841
9. AIR 1966 SC 220
10. AIR 2000 SC 3187
11. AIR 1955 SC 287
12. 2015(1) SCC 513
13. 1993 3 SCC 339
14. 2008(11) SCC 289
15. 2015 AIR SCW 3282
16. 2012 3 SCC 64
17. (2012)12 SCC 72
18. (2006)4 SCC 584
19. 2015 12 scale 500
20. AIR 1951 SC 207
21. 2015 (2) ALD (CrI) 627(SC)
22. AIR 2005 SC 4305
23. (2005) 8 SCC 130
24. 2015 AIR SCW 2643
25. 2004 8 SCC 40
26. AIR (2013) SC 3018
27. 1976 3 SCC 736
28. (2008) 5 SCC 248

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.4319 of 2015

ORDER :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioner/accused to quash the order passed in Crl.M.P.No.236 of 2015 in Cr.No.154 of 2011 on the file of the X Additional Chief Metropolitan Magistrate, Secunderabad, who took cognizance of protest petition filed by the defacto-complainant for the offences u/sec.3(1)(X) of SCs/STs(POA) Act, 1989.

2. Heard the learned counsel for the petitioner so also the learned Public Prosecutor representing State-1st respondent and also the learned counsel for the 2nd respondent-defacto-complainant and perused the material on record.

3. The factual matrix is that the 2nd respondent by name V.Jai Prakash is member of the 8th ward of cantonment area. The petitioner/accused is present Defence Estates Officer, Kolkota Circle, Kolkota, West Bengal and earlier worked as Chief Executive Officer of the Secunderabad cantonment member. The 2nd respondent presented a police report dated 25.08.2011, to the Station House Officer, Maredpally Police Station, against the petitioner herein with the averments that he belongs to Arrava mala of S.C. community and elected Ward Member from ward No.8 of Secunderabad cantonment from the reserved constituency, in the elections of May, 2008, that it is the practice in the cantonment Board that whenever Board meeting is held, the proceedings have to be recorded in the minutes book and got thereof to be circulated and in the Board meeting held on 20.07.2011, several deliberations took place indicating the irregularities in the prime land and unauthorized constructions taking place in the limits of the Secunderabad cantonment Board, that he requested to furnish the details of all cases pending in the Courts with present status as there are many instances where unscrupulous builders obtained status quo and making unauthorized constructions, that the Board taken no steps against said violators from the Court orders from which the collusion between the builders and local standing counsel appears apparent, and on hot debate on this aspect, his

request was unanimously supported resolved by the Board for initiation of suitable action within 15 days. While so on 22.08.2011 during the public Board meeting, he was shocked to see that deliberations took place during Board meeting dated 20.07.2011 not formed part of the minutes and the resolutions without reasonable explanation from the concerned officials, that when he strongly questioned and demanded to find out these lapses as the matter concerned of prime properties of Board and sanctity of Court orders, for which the accused Balakrishna-the then Chief Executive Officer, got infuriated remarked that his status is permanent in nature while Board members will come and go and said discussion grew serious and in the presence of Board members, staff, media general public and in the presence of the persons A.Srinivas, J.Ramakrishna, S.Nagraju, A.Raju, the accused abused and instigated the complainant by using filthy language and tarnished the image of the complainant and reputation but also warrants prosecution under the relevant provisions of law, and the said report was received on 26.08.2011 at 15.30 hours and registered as Cr.No.154 of 2011 u/sec.3(1)(x) of the Act by the Sub Inspector of Police and handed over investigation to the ACP, Mahankali.

4. The police from said investigation filed final report u/sec. 173 of Cr.P.C. dated 18.05.2012 column 6 shows lack of evidence is the cause. The final report reads that on 26.08.2011 at 3.40 hours V.Jai Prakash(complainant) lodged a complaint at Marredpally Police Station, Hyderabad who registered the same as Cr.No.154 of 2011 u/sec.3(1)(x) of the Act, and in the course of investigation besides the complainant, 20 more witnesses examined who were the persons present at the incident dated 23.09.2011 of the Board meeting and besides recording their statements also and from the discreet enquiries by the Investigating Officer, it revealed that one Ramakrishna, husband of Smt. J.Anuradha-a Cantonment Board Member, is a sleeping partner in Octroi and Toll Tax Contract and their interest was suffered due to termination said contract. One Baluka Mallikarjun and J.Ramakrishna said to have visited the office of accused and discussed about termination of Octroi and Toll Tax contract and accused told to one Kesava Reddy the close associate of complainant, not

to charge excess amount than rates prescribed in the S.R.O. and not to violate terms of the contract but said Kesava Reddy never tried to take the advice of accused in right manner to control violations. It was so on 21.07.2011, the Board has taken up the matter and with a voice vote, the Octroi and Toll Tax contract was terminated, in the said Board meeting, B.Narmada, J.Anuradha and Kesava Reddy and Jai Prakash voted against the proposal of termination of the Octroi and Toll Tax Contract. The contractors filed a Writ Petition in the High Court and the same was dismissed by the High Court, that prior to the Cantonment Board meeting on 22.08.2011, i.e. on 18.08.2011 Keshava Reddy, V.Jai Prakash(complainant), Banuka Mallikarjun and M.Ramakrishna visited the Sub Area Office to meet the GOC regarding Octroi and Toll Tax issue and the alleged accused was present in the Andhra Sub Area Office and pressurized him to release bank guarantee and even though the CEO tried to make them understand, they have stated that the Bank Guarantee should be released, else they will not allow him to work in the Cantonment. As far as the witnesses examined concerned, some members of the Board who attended the meeting denied to have occurred the alleged incident of abusing the complainant castigating him by the alleged accused Balakrishna, CEO, on the other hand, it can also be considered that, the reports who were brought by the complainant speaking in favour of the complainant and the alleged Smt. Bankuka Narmada, Smt. J.Anuradha, S.Keshava Reddy and V.Jai Prakash and others brought by the complainant are his interested witnesses since their intention is only to support him to get his wish and Keshava Reddy fulfilled, hence their version cannot be relied upon, whereas, the police report given only on 26.08.2011 with afterthought to involve the accused in the offence supra, as the accused is not acting to their will and wish and for not favouring them for strictly acting as per rules and regulations, that K.Madhu Mohan Rao,D.R.O., Hyderabad was present in the house being the official dignitary and responsible, having acquainted with the atrocities law and being responsible officer to enquire could not keep quiet when such alleged incident took place, the print electronic media usually covers Board meeting

and publish the same on the next day news, on the next day the allegations in the police report are true for such incidents not come in print and electronic media but the newspapers only speaking cantonment Board meeting held. But as prior statements furnished by the witnesses above though supporting version of complainant, V.Jai Prakash of C.E.O. abused in caste name the complainant, that had the accused Balakrishna abused the complainant, the language used by the alleged complainant would be the same, that the complainant established that he managed them to sign on the statements addressed to me in the way he desired so, but he has forgotten to take care that the language used by the alleged accused should be similar, when all the witnesses supporting the complainant speak the facts, the language which the alleged accused used on the complainant should be similar, from the above and from the evidence collected reveals, on 22.08.2011 when Board meeting of the Cantonment held at 9 hours at Board office presided by Major General K.Digvijay Singh, President of Cantonment Board, the members Head of Sections, Media people and other general public were present and the meeting was started at 9.15hours and discussions on the agenda items one by one were going on and item No.5(Revision of rates of Octroi and toll tax), President asked all the Board members for their views on termination of Octroi and toll tax contract, some expressed termination and others for necessary action against the Contactor as per Cantonment Act; suddenly some arguments with regard to recording of resolutions started and Jai Prakash(complainant) and Sri Keshav Reddy, members of the Cantonment Board shouted loudly saying that the C.E.O. S.Balakrishna should record in the minutes the resolution which should be as told by them but not as he(S.Balakrishna) likes, for which the C.E.O. S.Balakrishna replied that whatever discussions have been taken place in the Board only being recorded in the Minutes. At that time, Jai Prakash(complainant) repeatedly sdemanded in high pitch tone and called the CEO as rowdy. Then the CEO pointed out that he is not a rowdy and discharging his duties as Member Secretary of the Board and he can report all his objections to the President of the Board. Then Jai Prakash and Keshav Reddy raised from their chairs and proceeded towards the

CEO abusing in filthy language, but the members stopped them. The CEO also stood from the chair and shouted that Jaya Prakash(complainant) should not talk in filthy language and should behave as a responsible office Member of the Board but not as rowdy element. Subsequently on the request of the members and President of the Cantonment Board, the Members, Sri V.Jayaprakash and the CEO resumed their chairs and proceedings of the Board were continued and all the items in the agenda were discussed peacefully. The witnesses who were present when the Incident took place speak that heated arguments took place between the CEO and the complainant Jai Prakash and no such uttering of any words castigating the complainant took place and the version of the complainant Jai Prakash is found contrary to the version of the said witnesses and the complainant and the CEO are not on good terms since long on certain issues in the Board and the complainant is trying to establish his dignity before the other members to down the CEO for not acting according to his wishes favouring them with regard to the contracts of certain works which developed and lead to the incident. In order to corner the alleged CEO Balakrishna and root out him as he is not favouring them, the complainant seems to have preferred complaint against him with false and baseless allegations indulging him in an atrocities case

5. As the case stood thus, the C.D. file sent to the Public Prosecutor, PPO, XI Addl. CMM Court for opinion to finalize the case and the PPO opined as not a fit case for charging the accused person for the offence supra and there is no base even to raise a strong suspicion to say that the things have happened in the manner as projected by the defacto-complainant and none named in the complaint can be charge sheeted for the said offence.

6. Aggrieved by the same, the complainant filed a protest application before the learned Magistrate on 10.10.2014 vide CrI.M.P.No.236 of 2015 which reads that the investigating officer has not followed the cardinal principles of investigation into of offence contemplated under Cr.P.C. and thereby final closure report for lack of evidence is bad in law and untenable,

that law does not given permission to investigating officer to peep into the truthfulness of the statements of witnesses recorded but for of the Court to appreciate during evidence as to the veracity and the conclusions by the investigating officer from the witnesses' statements recorded of no such utterances by accused taken place abusing of complainant and thereby the investigating officer exceeded the parameters of law that resulted injustice, that there is no dispute with regard to the Board meeting held on 23.08.2011 and the other witnesses cited by names Jai Prakash(the protest petitioner-complainant), S.Kesava Reddy, Smt. Bhanuka Nrmada, the elected members of the Board were present in the meeting, but the final report is silent about this information in column Nos. 12 and 13 shown as blank which shows the investigating officer not examined any witness. that the S.C.& ST (POA) Act, 1986 is a Special Act and the Government appointed a Senior Officer of the cadre of Deputy Superintendent of Police to investigate and the investigating officer no way shown he was duly appointed under Rule 7 of the Act to investigate by the competent authority, thereby the final report is unauthorized, hence to reject, that the investigating officer to complete investigation on top priority within 30 days but admittedly the case was issued on 26.08.2011 and the final report is 18.05.2012 more than 8 months, that the opinion of the investigating officer about the delay in lodging report on 22.08.2011 for the occurrence dated 22.08.2011 is afterthought is unsolicited and the final report thereby is biased one to help the accused, hence, not to accept the final report by allowing the petition, record statements of all witnesses, take cognizance and issue warrants in the above crime against the accused.

7. Pursuant to which the protest petition on different dates came for consideration by return and representation, as the case may be, and the sworn statement of the complainant in protest petition was recorded by the learned Magistrate on 07.02.2005 besides J.Ramakrishna, a businessman A.Sreenivas of Begumpet, S.Nagaraju of Begampet and Raju of Marredpally saying in one voice as they also attended the Board meeting.

8. It is important to say in the original report registered as Cr.No.154 of

2011 by Sub Inspector of Police, Maredpally, the said Jai Prakash(complainant) mentioned the witnesses present are A.Srinivas, J.Ramakrishna, S.Nagaraju, A.Raju but not named L.Ws. 2 to 5 of the sworn statement recorded by the Magistrate on the protest application. Leave about L.W.1 Jai Prakash sworn statement, in tune to his report J.Ramakrishna who claimed as businessman of Maredpally, stated that on 22.08.2011 at the Board Meeting attended by him the complainant Jai Prakash, questioned the S.Balakrishna-CEO(accused) that the deliberations taken place on 20.07.2011 were not recorded in the minutes of the meeting for which the CEO not given appropriate explanation, for which Jai Prakash raised high voice, for which Balakrishna-C.E.O. stated his job is permanent and Board members can come and go from which the discussion has become serious, meanwhile Balakrishna abused Jai Prakash in filthy language by touching his caste as *"Nuvvu oka mala lanjakudukku vee, nuvvu naku yanduku yeduru vastunava, nee anthu chustha, mala nakodaka, mala bastard na tho fight chestay neenu board keranevakunda chestha"*. In fact, he stated that police examined him during investigation however his statement not recorded. Part-II Case Diary final report of the police shows said Ramakrishna was examined as L.W.3 on 30.09.2011 and he stated is resident of Plot No.60, Mahendra Hills, East Maredpally and he stated that the meeting of cantonment Board held on 22.08.2011 and several discussions on several public issues mentioned in the agenda were discussed and while the meeting was going on several heated arguments on some topics between Board Members and CEO took place and when Jai Prakash(complainant) insisted a reply from the CEO about certain irregularities committed by him, all of a sudden between Jai Prakash and C.E.O., heated arguments taken place and said CEO raged and started abusing Jai Prakash(Complainant) castigated him and tried to beat in a bit of anger and screamed Jai Prakash touching his caste name. Here actually words uttered touching caste with an intent to insult if at all not reflected from the Statement. He was examined by police is not even in dispute by J.Ramakrishna before the learned Magistrate and L.W.2 and there is no explanation in the statement before the Magistrate that even he

stated the actual words not reflected in the statement of the investigating officer when said Ramakrishna was examined on 07.02.2015, that too, on the protest petition of Jai Prakash who was supplied with final report and endorsed on the report from the Court on 02.03.2013, the said version of Ramakrishna before the investigating officer and not using any actual words of abuse whether to attract the offence supra or not, to decide the development in the protest application examination has to be viewed in that perspective. Even coming to A.Sreenivas, S.Nagaraju and Geethakumari, examined before the Magistrate on the protest petition on 07.03.2015 and his version is like of J.Ramakrishna supra whereas, in his examination before investigating officer as L.W.4 (A.Srinivas), dated 30.09.2011 is stated about half an hour after the meeting, he heard some loud voice from the Board meeting hall on which he went to the Board meeting place and observed the C.E.O. was in anger raised on Jai Prakash as "Mala lanjakodaka, nee anthu choosthaa, nenu talchukunte Boardku Ralevu" abused in filthy language. Whereas, the sworn statement recorded before the Magistrate on protest application, the words used stated as "Mala na kodaka, mala bastard, nuvu mala lanjakodukuvi, nee anthu chusta", leave about some difference in the said version even before the investigating officer but both convey the same thereby it is clear that the investigating officers investigating is not fair as what are the words stated in his examination of witnesses that he recorded but for that if at all investigating officer one sided as contended by the complainant. Like in the statement of Ramakrishna before the investigating officer nothing speaks of any words uttered actually. It could be even from the statement of L.W.4 A.Srinivas also from the police investigation statement.

9. Coming to the sworn statement of Raju before the Magistrate is in tune with A.Sreenivas, J.Ramakrishna and Nagaraju supra which are almost stereotyped version with even a parrot like.

10. The learned Magistrate therefrom passed an order dated 10.02.2015 which reads as follows:-

"Complainant is present. His advocate is present. Perused

the case record. The contents of the final report clearly go to show that there were exchange of filthy words in between the complainant and accused. Moreover, the contents of the sworn statements of the complainant and his witnesses P.W.2 to P.W.4 corroborating the allegations leveled by the complainant in his complaint. The contents of the final report have strengthened the allegations made by the complainant as the contents mentioned in the final report clearly visualizing that there was exchange of words coupled with the filthy nature in between the complainant and proposed accused. Hence, I felt the allegations made against the accused are well founded under Section 3(1)(x) of SC/ST (POA) Act, 1989. Therefore, I felt it will be just and proper to take the cognizance against the accused under Section 3(1)(x) of SC/ST (POA) Act, 1989. Hence, the cognizance is taken on accused Sri S.Balakrishna under Section 3(1)(x) of SC/ST (POA) Act, 1989. The office is directed to register the complaint as PRC No.11 of 2015. Issue summons to accused and call on 08.05.2015.”

11. It is against said cognizance order the quash petition filed with the contentions that the police having examined as many as 22 witnesses and concluded from the investigation of a false implication of the CEO Balakrishna by said Jai Prakash(complainant) for his insult discharged his duties for extraneous reasons as pointed, taking cognizance by the Magistrate simply by recording 4 sworn statements besides of complainant as L.Ws.2 to 5 is untenable and it is not a mere private complaint but outcome after police investigation referred report from protest application and the cognizance order of the learned Magistrate is by non-application of mind as unsustainable apart from the alleged occurrence even from the say in discharge of official duties in the public Board meeting where the accused was functioning as CEO. When such is the case, the sanction under Section 175 of Cr.P.C. is mandatory for the Magistrate to take cognizance without which the cognizance order is unsustainable and liable to be quashed. Apart from that, the case is falsely foisted and none of the provisions of SC & ST Act applies and the provisions are in misuse out of spite and ill-will by the complainant and the Court cannot allow such an abuse of process to subserve the ends of justice. Apart from delay in report of occurrence also to be viewed for the deliberations and consultations in

false implication and therefrom to be quashed.

12. Whereas, the defacto-complainant as 2nd respondent to the quash petition supported the order of the learned Magistrate saying it is in the four corners of law as per the Sections 200 to 202 Cr.P.C. in taking cognizance u/sec. 190 of Cr.P.C. and issued process u/sec. 204 of Cr.P.C. and thereby sought for dismissal for nothing to interfere by this Court u/sec. 482 of Cr.P.C.

13. Heard and perused the material on record.

14. Instead of reproducing the details respective contentions to avoid bulky, this Court is going into merits with reference to respective contentions in arriving just decision of the lis.

15. Undisputedly, the order of the Magistrate taking cognizance is simply from statement of the protest petitioner/defacto-complainant-the L.W.1 and P.Ws.1 and 4 more witnesses whose sworn statements recorded as P.Ws. 2 to 5 and nothing beyond. If it is a private complaint for the first time to take cognizance from the enquiry contemplated u/sec.200 to 202 read with 190 of Cr.P.C. it is a different thing. It is not the same from facts on hand undisputedly. It is in fact, the alleged occurrence taken place on 22.08.2011 in the Board official meeting while going on where the complainant participated as 8th ward member whereas, the accused C.E.O. participated in the official capacity as Member Secretary of the Board. It is in that Course even from the versions so called heated exchanges took place including in slip of words or abuse. In the facts, it is difficult to decipher actual words uttered context with other official meeting proceedings and participation from the context as even from the very complainant/informant, it is in question about the alleging in recording of earlier meeting minutes by the C.E.O. it was pointed out, for which there was a reply and in that official status and discharge of duties and in the official meeting there is the alleged excess in uttering words touching the caste if at all the same is even believed true.

16. It is in this context where sanction is required or not to take

cognizance under Section 197 of Cr.P.C. is to be answered.

17. Section 197 of Cr.P.C. reads as follows:-

197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: ¹ 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) ¹ Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President,

with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

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

18. As per Section 197(1) supra the sanction is mandatory from the government concerned of the public servant, the accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of official duty and without such previous sanction, no Court shall take cognizance such alleging offences. In three judge Bench expression of Apex Court in **P.K.Pradhan Vs. State of Sikkim Rep. by the CBI**^{[\[1\]](#)} held at paras-5 to 16 that referring to several of the earlier expressions right from **Hori Ramsingh Vs. Emperor**^{[\[2\]](#)}, **HHB Gill Vs. the King**^{[\[3\]](#)}, **Amrik Singh Vs. State of Pepsu**^{[\[4\]](#)} **Sreekantiah Ramayya Munipalli Vs. State of Bombay**^{[\[5\]](#)}, **Matajog Dobey Vs. H.C.Bhari**^{[\[6\]](#)}, **Omprakash Gupta Vs. State of U.P.**^{[\[7\]](#)}, **B.Saha Vs. M.S. Kochar**^{[\[8\]](#)}, **Baijnath Gupta Vs. State of Madhya Pradesh**^{[\[9\]](#)}, **Abdul Vahab Ansari Vs. State of Bihar**^{[\[10\]](#)}, **K.Satwant Singh Vs. State of Punjab**^{[\[11\]](#)} observed in para-5 that “the legislative mandate engrafted in sub section (1) of Section 197debaring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the Statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code, "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty." The offence alleged to have been committed must has 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 for determination 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 a court has to 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 official duty, though, possibly in excess of the needs and requirements of situation” and further discussing in para-6 from Hori Ram Singh supra observed that “ the question was considered as to whether the protection under Section 197 of the Code can be confined only to such acts of the public servant which are 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, and in para-8 referring to Sreekantiah Ramavva Munipalli supra quoting Hori Ram Singh supra observed that “Section 197 of the Code should not be construed in such a narrow way so that the same can never be applied for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning.” In para-9 referring to Amrik Singh supra held that held Section 197 of Cr.P.C. that “if the discharge of official duty and the act of the accused complained of are inseparable, sanction under Section 197 of the Code would be necessary.”. In para-12 referring to Sureshkumar Bhikamchand Jain supra referring to earlier expression of Matajog Dobey held “the legislative mandate engrafted in subsection (1) of Section 197 debarring a court from taking cognizance of an offence except with previous sanction of the Government concerned, this Court has laid down that he said provision is a prohibition imposed by the statute from taking cognizance and, as such, exercising jurisdiction of the court in the matter of taking cognizance and, therefore, a court will not be justified in taking cognizance of the offence without such sanction on a finding that the acts complained of are in excess of the discharge of the official duty of the government servant concerned”.

Para-14 to 16 referring to the Constitutional Board expressions of K.Satwanth Singh and also Om Prakash Gupta supra observed that for

claiming protection u/sec. 197 Cr.P.C. it has to be shown reasonable connection between the Act, complained of and discharge of official duty. It is well settled that the question of sanction u/sec. 197 of Cr.P.C. can be raised at any time after the cognizance, may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well, any appeal. In **Rajib Ranjan Vs. R.Vijakumar**^[12] two judge Bench at paras 14 to 18, it is observed sanction however is necessary if the offence alleged against the public servant is committed by him after acting or purporting to act in the discharge of his official duties as held in **Buddi Kota Subbar Rao Vs.K.Prakasham**^[13] para-6 the fact or omission on facts found reasonable connection that discharge of his duty by the accused thereby sanction is required that cannot be disputed. In **Raghunath Anant Govilkar Vs. State of Maharashtra**^[14] supra referring to Sreekantaiah and Amrik Singh supra observed if the act complained of is concerned with official duties, sanction would be necessary and therefrom observed if a public servant enters into a criminal conspiracy and indulges in criminal misconduct and misdemeanor, it is not to be treated as an act in discharge of official duty thereby in that case sanction held not necessary. Even from Rajib Ranjan supra, the principle of law laid down of the act complaint of no way connected to the discharge of duties, sanction is imposed is reiterated. In **Inspector of Police Vs. Battenapatla Venkateramaiah**^[15] the three judge Bench expression of the Apex Court referring to Rajib Ranjan supra observed the facts of that case while reiterating the principle of the protection u/sec. 197 given to the public servant is in the public interest and in **Subramanian Swamy Vs. Manmohan Singh**^[16] -it was held that the provisions dealing with sanction u/sec. 197 of Cr.P.C. must be construed in such a manner as to advance the cause of honesty, justice and good governance and the para-74 therein speaks that public servants are treated as a special class of persons enjoying the special protection so that they can perform their duties without fear and favour and without threats of malicious prosecution. Thus even from this Battenapatla Venkata Ratnam supra if it is connected with

the discharge of duties even there is excess sanction is required.

19. In **Om Prakash V. State of Jharkhand and Kailashpathi Singh V. Rajiv Ranjan Singh**^[17] (common order) in relation to the encounter killings from the attack against police, it was observed on the scope of Section 197 Cr.P.C that prior sanction is a pre-condition for taking cognizance of offences against the police officials and there is no requirement for such accused officials to wait till framing of charges to raise the plea. In **Sankaran Moitra V. Sadhana Das**^[18] it was held that when police fired in defence and in performance of their official duties cannot be prosecuted without sanction under Section 197 Cr.P.C and therefrom quashed the prosecution initiated against them by the Apex Court. In **N.K.Ganguly Vs. CBI, New Delhi**^[19] though a case under Section 19 of the P.C.Act referring to Section 197 of Cr.P.C. also referring to the earlier three judge Bench expression of **R.R. Chary Vs. State of U.P.**^[20] on the scope of Section 197 of Cr.P.C. the word cognizance indicates very initially of proceedings against the public servant and the three judge Bench in **Amrik Singh supra** held the requirement of sanction can be raised at any stage and in **Matajog Dubey supra** it was held Section 197 of Cr.P.c is not ultra vires to Article 14 of the Constitution of India, and it is imperative to obtain sanction of the alleged offence is committed in discharge of official duty by the accused in saying without sanction the proceedings are unsustainable also referring to the conclusion, several expressions including **Srikanthaiah and Hori Ramsingh, a Federal Court** and **Satwanth Singh of Constitutional Bench expression** and **Baidyanath Gupta supra** in concluding that if the application of the Cr.P.C. of also held in another Constitutional Bench expression **B.Saha supra** is that the offence charged for want of commission or omission must be one which has been committed by the public servant either in his official capacity or under the colour of the office held by him. In another recent expression of the Apex Court in **Nanjappa Vs. State of Karnataka**^[21]. No doubt the case under Section 19 of P.C. Act by also referring to several expressions including u/sec.197 of Cr.P.C. including the Constitutional Bench expressions of **B.Saha,**

Badrinath Tripathi supra and **State of Karnataka Vs. C.Nagarajaswamy**^[22] among the others to the conclusion that the order of acquittal on the ground of acquittal recorded by setting aside by the High Court found fault by allowing the appeal setting aside the reversal order of the High Court saying sanction required.

20. In **Nagarajaswamy** supra it was held that when prior sanction by competent authority is provided by statutory provision which is a sine-qua-non for taking cognizance, ordinarily the question to be dealt with is at the stage of taking cognizance. Even cognizance taken erroneously, once the same comes to the notice of the Court at a later stage finding to that effect is to be given by the Court. The accused is entitled to take such plea or sanction required at any point of time including even in hearing the appeal before the appellate Court. It was held that when all the mandatory requirements of the statutory formalities not complied with, practically cognizance cannot be taken by the Court and any cognizance taken is therefrom is unsustainable.

22. In further saying as held in **Nagarajaswamy** supra and **State of Goa Vs. Babu Thomas**^[23] for want of sanction the Court taking cognizance is incompetent and that error was so fundamental that invalidated the proceedings conducted by trial Court by relegating the parties to apposition where the competent authorities could issue on appropriate order sanctioning the prosecution. In another expression **D.T.Virupakshappa Vs.C.Subhash**^[24] referring to **Kumar Raghavendra Singh Vs. Ganesh Chandra Jew**^[25] of protection u/sec.197 Cr.P.C. is to protect responsible public servant against the institution of possibly vexatious criminal proceedings for the offences alleged to have been committed by them while they are acting or purporting to act as public servants. If in doing his official duty he even acted in excess of a duty when there is reasonable connection between the act and performance of duty, the excess will not be sufficient ground to deprive the protection to the public servant and it was observed ultimately when police allegedly exceeding in exercise of his power in alleging while investigating he

assailed the complainant and detained him in police station, said offence committed is when reasonably connected with the performance of the official duty previous sanction is mandatory and the proceedings thereby followed vitiated in quashing the proceedings.

23. Having regard to the above, from the above expressions referring to the principle laid down as to when sanction is required when not, coming to the facts of the case on hand, when it is a clear case that the accused is discharging official duty as CEO-Principle Secretary of the Board in the respective meetings including it is a duty to attend and record the minutes and while the official meeting was going on including from presence of the complainant and questioning of earlier minutes of meeting not properly drawn and there were exchange of heated words between them and in the course the alleged abuse taken place, it is interconnected with the discharge of official duties with alleged excess thereby sanction is mandatory, without which the proceedings are null and void and unsustainable and are liable to be quashed of the cognizance taken by the learned Magistrate without advertent to the requirement or any of the sanction and without application of judicial mind engrafting mechanically cognizance by taken on file to allot PRC Number to commit to the Special Court of Sessions. Apart from the above coming to the facts further on the cognizance taken otherwise sustainable or not concerned, the Apex Court in the expression of 5 judge Bench in **Dharampal Vs. State of Maharashtra** ^[26] held that the Magistrate has a role to play while committing a case to the Court of Sessions upon taking cognizance on the police final report submitted u/sec.173 of Cr.P.C. read with Section 190 Cr.P.C. In the event, the Magistrate disagrees, when the police final report, has to choice that is made to act on the basis of a protest petition that may be filed or made, while disagreeing with the police report, to issue process and summoning the accused. From this, it is clear that even police filed final referred report, Magistrate may defer with the opinion of police and can take cognizance and going through the entire material or on even protest application filed by the complainant may proceed to enquire into to take

cognizance or thereunder.

24. No doubt, it is not therefrom a mere proceeding like a private complaint case while proceeding against the accused on a protest application even the Magistrate accepted the police referred report while proceeding on the protest application of the accused, leave about the Magistrate by going through the final report even deferred with the police referred report opinion and can take cognizance. Here the Magistrate did not take cognizance by deferring with police final referred report containing more than 22 witnesses examined including the President of Cantonment Board among other officials and non-officials, including Ward Members attended public meeting whether the issue allegedly taken place. Then out of the two options referred in Dharampal supra, one not availed by the Magistrate and the other is to proceed on the protest application. When such is the case, the Magistrate is bound not only simply to accept the facts referred in the protest application and the sworn statement of protest petitioner-cum-any other witnesses but also bound to consider earlier police referred report and also if necessary accept any explanation impugning the investigation including among those witnesses examined by the Investigating officer if explained away as to they did not so state before investigating officer or they were not even examined or of they stated not correctly reflected. Without which, that too, when police filed referred report outcome of earlier crime registered is part of the Court record and it is based on report alone, protest application is filed impugning the referred report from the very protest raises that referred report formed part for consideration to consider the protest against. By then the Magistrate shall have no right at all to totally ignore the earlier investigation final referred report. From that principle when applied to the facts here from the police final referred report there are as many as 22 witnesses examined of whom but for one Kesava Reddy shown sailing with the complainant and from perusal of the material is the main person besides B.Narmada, Mallikarjuna(husband of B.Narmada) and J.Ramakrishna whose wife is Anuradha-Board member, on investigation material clearly shows they all got grievance apart from the others viz; Nagaraju in sailing with the

complainant, CEO wants to cancel the Toll Tax, Octroi collection contract that was the issue also in the meeting for which he is not accommodating them that causes loss to them from any extension of the contract they got the grievance. In the protest application there is nothing against the investigating officer personally attributed even to say what is the basis for investigating officer if at all to allegedly acted is unfairly or with any bias. On perusal being a senior officer of the D.S.P. cadre when investigated the case in the absence of showing how the investigating officer is not fair, the Court is bound to accept such investigation before. No doubt by reason, the protest complainant is entitled to point out here there is nothing basis to say investigation by the Senior Police Officer is not fair. Here importantly several of the witnesses like K.Ramachandra and staff reporter(among the media persons) attended, stated there was some sudden arguments between the CEO Balakrishna(accused) and Ward Members Jai Prakash(complainant) and Krishna Reddy and other cited and Krishna Reddy and Jai Prakash raised from their chairs by proceeding towards CEO Balakrishna by abusing him as rowdy and they were stopped by Pratap, Venkata Rao, and Balakrishna Pointed them for their using as rowdy in his saying he is responsible member they have to behave as responsible members and the same was after pacified particularly at the request of the President of the Cantonment Board Major General K.Digvijay Singh and work was resumed and the agenda further meeting went on peacefully and the CEO Balakrishna did not abuse in his presence, the said Jai Prakash and another Press reporters among the media also stated so including the District Revenue Officer, Parasani Shyam Kumar, Member of the 7th ward of the cantonment, Panasa Venkata Rao another Board member, A.Ashok Kumar, journalist among the press on behalf of the TV5 news channel and Ramadugu Venkat another Press Reporter of Andhra Prabha, Nampally Srinivas Press Reporter of Vaartha daily newspaper, J.Pratap, Board Member of the Cantonment, one Yogeshswamy another nominated Member of the cantonment, another Major General Digwijay, President of the Cantonment Member, one Joseph M.G.Celestian so and one Geetha Kumari Office Superintendent supra

also stated so when all they in one voice being the independent witnesses stated that there was no any abuse by the C.E.O. Balakrishna of Jai Prakash but for Jai Prakash and Krishna Reddy that abused Balakrishna including addressing meeting as rowdy for which he felt sorry for it and questioned them to behave like responsible member of the cantonment member and he is discharging his official duties, it clearly speaks without any such incident happened on 22.08.2011 as pointed out rightly by the investigating officer after deliberations and consultations with the motive behind to implicate the CEO-Balakrishna as he is not acting to their tunes to benefit them in the Octroi and toll tax contract extension and also in other aspects for the C.E.O. discharging his official duties strictly as per law and procedure being a public servant, to malign him and demeaning him and made him to tend to them if possible a distorted version brought into existence after three days by false implication for the first time in that report and once the investigating officer from the independent witnesses version and also from the versions of the persons noted in the F.I.R. among others members including attended besides the President of the Cantonment Member and several press people mostly in one voice stated any such instances was happened the referred report is right and justified by the conclusions. When such is the case, the learned Magistrate by recording 34 sworn statements of the complainant and the persons to his tunes brought by him, taken cognizance of the case totally ignoring the police referred report supra and none of the even independent witnesses who categorically stated no such incidents as happened, even not examined at least one to say the investigating officer did not record his statement or he did so state or even he stated to the investigating office about any abuse taken place it is not properly reflected even to defer with the investigating officer from the so called protest to take cognizance, thereby the cognizance taken by the learned Magistrate simply based on the few versions of the complainant/protest petitioner and his three or four more persons which he cited to his tunes is unsustainable and it is nothing but abuse of process by the complainant to wreak vengeance for which the legal machinery cannot be allowed to use and any such permission is

nothing but grave abuse of process and the inherent powers are there to prevent such abuse to subserve the ends of justice.

25. Having regard to the above, cognizance taken by the Magistrate per se unsustainable for no factual foundation for the police final report with 22 witnesses with mostly about more than 15 including all independent witnesses show any such incidents happened to believe in distorted version of the defacto-complainant as protest petitioner in his saying in tune to his report given after 4 days of the alleged incident and in citing three or four more persons to support him when they have got motive behind the issue to support the complainant as the official is not acting to their tunes to accommodate for their extraneous gains. Further more when the act incredibly connected with the official discharge of duty sanction is mandatory. The Apex Court in Smt. **Nagavva Vs. V.S.Kojalgi**^[27] held whether the allegations in the complaint are highly improbable and no prudent person can believe or reach to the conclusion to support the allegations. It is a fit case for quashing the same is really by the recent expression of the Apex Court in D.T.Virupakshappa supra where categorically held even there is excess of discharge of official duty, sanction is mandatory in quashing the proceedings and referring to it and also the Apex Court including **Anjani Kumar Vs.State of Bihar**^[28], it was held when complaint filed against the government official as a counterblast to the action taken by him and when the facts show the complaint as afterthought with deliberations roped the official in continuation of proceedings amounts to abuse of process therefrom quashed the proceedings and for that conclusion referred several expressions.

26. In the result, the Criminal Petition is allowed quashing the proceedings in CrI.M.P.No.236 of 2015 in Cr.No.154 of 2011 on the file of the X Additional Chief Metropolitan Magistrate, Secunderabad. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:28.01.2016

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- [\[1\]](#) AIR 2001 SC 2547
 - [\[2\]](#) AIR 1939 FC 43
 - [\[3\]](#) AIR 1948 PC 128
 - [\[4\]](#) AIR 1955SC 309
 - [\[5\]](#) AIR 1955 SC 287
 - [\[6\]](#) AIR 1956 SC 44
 - [\[7\]](#) AIR 1957 SC 458

 - [\[8\]](#) AIR 1979 (0) 1841
 - [\[9\]](#) AIR 1966 SC 220
 - [\[10\]](#) AIR 2000 SC 3187
 - [\[11\]](#) AIR 1955 SC 287
 - [\[12\]](#) 2015(1) SCC 513
 - [\[13\]](#) 1993 3 SCC 339
 - [\[14\]](#) 2008(11) SCC 289
 - [\[15\]](#) 2015 AIR SCW 3282
 - [\[16\]](#) 2012 3 SCC 64
 - [\[17\]](#) (2012)12 SCC 72
 - [\[18\]](#) (2006)4 SCC 584
 - [\[19\]](#) 2015 12 scale 500
 - [\[20\]](#) AIR 1951 SC 207
 - [\[21\]](#) 2015 (2) ALD (CrI) 627(SC)
 - [\[22\]](#) AIR 2005 SC 4305
 - [\[23\]](#) (2005) 8 SCC 130
 - [\[24\]](#) 2015 AIR SCW 2643
 - [\[25\]](#) 2004 8 SCC 40
 - [\[26\]](#) AIR (2013) SC 3018

 - [\[27\]](#) 1976 3 SCC 736
 - [\[28\]](#) (2008) 5 SCC 248