

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Mis. Petition No. 483 of 2015

Dr. Ramesh Kumar Gupta S/o Shri A. R. Gupta, aged about 63 years,
R/o Mungeli Naka, Near Green Park, Bilaspur, Civil and Rev. Distt.
Bilaspur, Chhattisgarh,

---- Petitioner

Versus

State of Chhattisgarh through Police Station Chakarbhata, District
Bilaspur, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri P. K. Verma, Sr. Advocate with Shri Sumit Verma, Advocate for the petitioner.
For Respondent-State	:	Shri Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

C A V O R D E R

Reserved on : 05.01.2017

Delivered on : 15.02.2017

1. The present petition under Section 482 of CrPC has been filed seeking for quashment of the FIR registered at Police Station, Chakarbhata as Crime No. 350 of 2014 and also for quashment of the criminal trial initiated thereafter in Sessions Trial No. 37 of 2015 pending before the Special Judge, SC & ST (Prevention of Atrocities) Act, Bilaspur. The Petitioner in the said case is being prosecuted for the offence punishable under Sections 304-II, 308 and 34 of IPC.

2. Relevant facts for the adjudication of the present case are that a Medical Camp was held on 8.11.2014 at Pendri, Sakri. It was a camp conducted under the National Family Planning Programme, a camp meant for sterilization of women. The venue of the camp was decided to be Nemichand Jain Cancer Hospital. On the date of incident i.e. on 8.11.2014, the Petitioner was posted as a Surgical Specialist at District Hospital,

Bilaspur. On 9.10.2014, the Block Medical Officer, Takhatpur, had issued a Circular allotting duties to the different Doctors and Nurses for the camp to be held on 8.11.2014 at Pendri, Sakri. The camp at the aforesaid venue was to be conducted in three rooms of which one was converted into a room for operating the patients. The Petitioner was one of the doctors allotted duty for performing operations; while other Doctors and Nurses were deputed for attending the patients before operation and likewise a few Doctors and Nurses were also deputed for attending the patients post operation in the other rooms. The operation of the patients on the said date, i.e., on 8.11.2014, started in the post-lunch session and in all the Petitioner conducted 83 operations on the said date. After the operations, the patients were taken into the recovery room and were attended by other Doctors and Nursing staff. They were provided with 10 tablets each of the drugs Ciprocine and Ibuprofen and were explained in respect of the medicines to be taken and all the patients were discharged. However, after all the patients reached their respective home and immediately after consuming the tablets which were provided for the recovery of the patients started getting unwell. Many of the patients started getting giddiness accompanied by vomiting and as soon as most of the patients who had underwent the sterilization operation on the said date started getting unwell, the news spread like fire and about 132 patients in all who had underwent the operation on the said date were admitted to the various hospitals in the city and in due course of time 12 of the ladies who underwent sterilization operation on the said date died and the other who were admitted to the hospitals underwent prolonged treatment and were later on discharged.

3. The record shows that an FIR in this regard was lodged on 11.11.2014 wherein the present Petitioner and some others were made accused. In due course of time, the charge-sheet was filed on 15.2.2015 before the Judicial

Magistrate First Class, Belha and subsequently taking into consideration the nature of offence registered against the accused persons, the matter was put to trial before the Sessions Court i.e. the Court of Special Judge, SC & ST (Prevention of Atrocities) Act, Bilaspur, where the case was registered as Sessions Trial No. 37 of 2015. As per the counsel for the petitioner the charges are yet to be framed.

4. The Petitioner, Dr. R.K. Gupta, in the present petition has sought for quashment of this registration of the FIR and subsequent criminal prosecution initiated and which is pending before the Special Judge (... Atrocities), Bilaspur. According to the Petitioner, the offence which have been charged against him are that of under Sections 304-II, 308 and 34 of IPC.

5. Learned Senior Counsel, Shri Pramod Verma, appearing for the Petitioner submits that from the charge-sheet which has been filed by the prosecution before the Court below without any sort of addition or subtraction made in the said charge-sheet itself would establish that so far as the conduct of the Petitioner is concerned, there is no ingredient whatsoever available which are required for making out an offence under Section 304-II or, for that matter, 308 of IPC. According to the Senior Counsel, even if the entire charge-sheet is accepted as it is even then it would clearly reflect that the Petitioner has been only made a scape goat in the entire episode without there being any material whatsoever to implicate him for the said offence. According to him, though the post-mortem report of Nembai as well as Dulari Bai shows the cause of death to be septicemia but the same has not been confirmed from the biological report which was obtained by the prosecution during the course of investigation which disproves the entire case of the prosecution so far as negligence on the part of the petitioner in the course of conducting the surgery is concerned. The

contention of the learned Senior Counsel is that there were a large number of females who had got the sterilization conducted on 8.11.2014 got unwell only after they had started consuming the medicines given to these patients for post sterilization recovery. That it was not the sterilization which was the reason for the patients to become unwell and the subsequent death of 12 of these patients but the intake of the spurious medicines which were given to these patients. According to him, none of the patients who had died, septicemia was the cause of death. Though there were 12 causalities and about 100 people getting unwell only in the case of two persons is the allegations of septicemia levelled, which itself falsifies the entire case of the prosecution so far as implicating the Petitioner is concerned. According to learned Senior Counsel, the entire episode of sterilization and its subsequent fall out became a big issue in the media both print and electronic and is known as 'Nasbandi Kaand'. Since there was a huge hue and cry in the society as also in the media, the State Government as its first reaction without application of mind got the FIR lodged against the persons who had conduct most of the surgeries without even getting it assessed or verified as to the cause of the patients getting unwell and a few of them dying in the course of treatment. Thus, according to learned Senior Counsel, the Petitioner has been made a scape goat.

6. Shri Verma, learned Senior Counsel for the Petitioner, further submits that in due course of time it was the case of the prosecution itself as is reflects from the charge-sheet which has been submitted before the Court below that, the conditions of the patients who had undergone sterilization went bad immediately after the consumption of the medicines provided to each of the patients, i.e., the tablets of Ciprocine and Ibuprofen. That on medical test being conducted it was found in the report of the Laboratories that the tablets contained poisonous chemical combinations which included

the chemicals which are usually used for killing rats and rodents. According to learned Senior Counsel, it cannot be a case where only two of the patients died because of septicemia and all other patients who had died were for some other cause. There could only be one reason for all the patients who had died and it could also be the same reason for all the other patients who had also become unwell. It cannot be a case where two persons received septicemia and so far as the other patients are concerned who developed complications were because of spurious, substandard and poisonous medicines manufactured and supplied by the co-accused persons. Thus, he sought for the quashment of the FIR and the criminal case against the Petitioner on this ground.

7. In addition, learned Senior Counsel for the Petitioner took another legal ground for quashment of the entire criminal prosecution and the registration of the criminal case, i.e., of not obtaining prior sanction before initiation of criminal case. According to learned Senior Counsel, there is a legal bar while initiating a criminal prosecution against a public servant. According to him, subsequent to the amendment brought in to the Code of Criminal Procedure, 1973, it was mandatory for the authorities to have obtained previous sanction before initiating criminal prosecution against a public servant particularly in connection with an offence which is alleged to have occurred in discharge of its official duties. According to him, it is not in dispute that the incident of 8.11.2014 and the allegations levelled against the Petitioner and the nature of offence charged against the Petitioner are one which were exercised in the course of discharging of his official duties. In the absence of a prior sanction being obtained the entire case of the prosecution, i.e., the registration of the FIR and the subsequent initiation of criminal case so far as the Petitioner is concerned stands collapsed and the criminal prosecution deserves to be quashed on this ground alone.

8. Learned senior counsel for the petitioner alleged that a plain reading of the charges which have been levelled against the petitioner by itself establishes the fact that the petitioner had not properly sterilized the surgical equipments which could be the reason for the patients to get affected from septicemia. It was the allegation of the prosecution against the petitioner that the petitioner himself had also performed the duty of an anesthetist, a job which was otherwise to be performed by an anesthetist. Likewise, it was alleged that the petitioner had shown undue haste in performing all the operations with an intention of creating a record of performing maximum number of operations within a short span of time and also to earn more money by performing more number of operations. According to the counsel for the petitioner, all these acts are all which were done in the course of his employment and therefore it would be mandatory on the part of the State Govt. to have obtained prior sanction before taking cognizance of such offence against the petitioner. According to the petitioner, under the old Criminal Procedure Code it was not a mandatory requirement. However, subsequent to the coming into force the new Criminal Procedure Code, 1973 it has become mandatory for obtaining a previous sanction from the Govt. before taking cognizance. In the given facts and circumstances of the case, counsel for the petitioner prayed for allowing of the petition and quashing of the entire criminal prosecution initiated against the petitioner arising out of the FIR registered on 11.11.2014 and the consequential criminal prosecution initiated in Sessions Trial No. 37 of 2015 pending before the learned Special Judge, Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, Bilaspur.

9. Per contra, learned Counsel for the State, opposing the petition submits that the petition is totally devoid of merits and deserves to be rejected in limine. According to the State Counsel, there is ample evidence

collected by the prosecution/investigating agency during the course of investigation so as to establish the negligence on the part of the Petitioner and to show that he was involved in the commission of offence. According to the State Counsel, by the act of negligence on the part of the Petitioner when at-least two of the ladies out of 12 casualties that occurred on 8.11.2014 were attributable to the acts of the Petitioner which further establishes the commission of the offence by the Petitioner. There is no dispute so far as the posting of the Petitioner at the place of incident and it is also not in dispute that the Petitioner had operated as many as 83 females under the Family Planning Programme of the State Government. The Petitioner in fact had not taken care of the situation as he is supposed to do. It was also contended that the Petitioner has failed to discharge his duties properly inasmuch as he has failed to take note of the fact that the conditions where the operations were to take place were not up to the mark inasmuch as it was under totally unhygienic conditions and the rooms where the patients were waiting and also taken care of after the operation were not clean and tidy nor were there any safety precautions.

10. Learned Counsel for the State took the Court through the statements which were recorded during the course of investigation where they have categorically stated in respect of the unhygienic, unhealthy and unsafe conditions under which the ladies had undergone the operation. According to the State Counsel, the Petitioner instead of going in for achieving the target or for record of conducting maximum operations in a day should have refused to perform the operations until and unless the atmosphere was congenial for the operations. According to him, once when the Petitioner was entrusted with the responsibility of performing the operations it was his duty to have decided whether the atmosphere or the venue where the operations had to be performed was healthy, safe and hygienic. If not, he should have refused

to have performed the operations and should have waited for the authorities to make the atmosphere congenial. In the absence of this, the Petitioner cannot escape from the responsibility of being negligent in discharging of his duties. According to the State Counsel, the act which is alleged against the Petitioner being one of a criminal act and the offence being one under Section 304-II, 308, 34 of IPC the necessity of the requirement of seeking a sanction from the State Government is not required. According to him, the same would be required only in the event if the alleged offence was one which was in the course of his employment. He further submitted that the petitioner already stood terminated from service therefore also previous sanction of the State Govt. would not be required.

11. Learned Counsel for the State further submits that from the charge-sheet it has also been projected that the Petitioner has also committed the misconduct and negligence in the course of various operations that he had undertaken, inasmuch as the Petitioner is said to have not properly sterilized the leproscope after each of the operations and that even if it was sterilized it was not sterilized with the minimum period of time it should be sterilized and this fact further aggravates and strengthens the case of the prosecution so far as the negligence of the Petitioner is concerned.

12. State counsel further submitted that the nature of the act committed by the petitioner is so serious that its gravity alone is to be taken as sufficient ground for rejection of the present petition. According to the State counsel, it is a case where about 12 ladies who had underwent tubectomy expired, in addition, about 83 patients had also become unwell. It all happened because of the act of the present petitioner and the other accused persons. Whether the offence is made out or not is yet to be adjudicated, which can be adjudicated only after recording of the evidence and it cannot be decided at the preliminary stage.

13. State counsel further argued that at this preliminary stage where charges have also not been framed it would not be proper for this Court in exercise of its power under Section 482 CrPC to conduct a roving enquiry or hold a mini trial to reach to a conclusion whether an offence is made out or not. State counsel contended that it has been attributed against the petitioner in the charge sheet of showing undue haste and hurry in conducting the 83 tubectomy operations within a short span of just over three hours time. It was the contention of the State counsel that the petitioner did not care to take into consideration the unhygienic condition prevailing in the room before starting the operation. He should have refused to perform the operation if the conditions were not conducive and hygienic. It was alleged by the State counsel that because of the unhygienic condition and improper sterilization of the surgical instruments particularly the laparoscopy, the patients got infected and suffered from septicemia.

14. So far as the issue of not taking previous sanction from the Govt. before taking cognizance and before initiating prosecution case against the petitioner is concerned, the stand of the State Govt. as also the stand taken by the State Govt. in their reply is that the services of the petitioner was terminated immediately after the incident and since he is a terminated employee, previous sanction was not required. Therefore, compliance of provisions of Section 197 CrPC was not required in the present case and the same cannot be a lapse and lacuna on the part of the State Govt. Thus, for all the aforesaid reasons, the State Counsel prays for rejection of the petition holding it to be without any merit and totally misconceived.

15. Having heard the rival contentions put forth by the counsel appearing on either side and on perusal of the record it would be relevant at this juncture to mention certain undisputed facts of the case. Firstly, there was a Camp held under the National Family Planning Programme on 08.11.2014.

The venue of the camp was Nemichand Jain Cancer Hospital, Sakri near Pendri, Bilaspur. The petitioner along with other team of doctors and staffs were deputed for performing the operations in the said camp. The petitioner at the relevant point of time was working as a surgical specialist at the District Hospital, Bilaspur. After the operations were conducted, each of the patients were given 10 tablets each of the drugs Ciprocil and Ibuprofen. These tablets were manufactured and supplied by the pharmaceutical companies who are also the co-accused. After the patients who had undergone the operations started consuming these drugs, they fell ill and were taken to the hospital. About 132 ladies had undergone the said operation out of which 12 patients had died and about 83 patients fell seriously ill. Only in respect of three ladies namely Nem Bai, Dulari Bai and Shivkumari Bai, the Postmortem reflected that the death was because of septic shock. However, for confirmation, it was advised for corroboration opinion which could be given after the report of Culture by chemical analysis, Histopathological analysis and chemical analysis. It is not in dispute that the two drugs which were given to the patients for recovery i.e. the tablets of Ciprocil and Ibuprofen were sent for Forensic Science Laboratory, Raipur, the report of which was received showing that it was spurious and also contained rat poison sufficient to kill human being. The said drugs were also sent to Qualichem Laboratory where also the report was confirmed of the drugs being spurious and substandard and also containing poisonous substance.

16. Another admitted position is that the blood samples of the patients admitted in the hospital were sent to the Department of Microbiology for examination. After performing blood Culture, they did not find any trace of septicemia in the patients because of the fact that in the blood culture they did not find any bacteria whatsoever as is evident from Annexure A-7 enclosed along with the petition. Unless there is a bacteria found in the

blood culture, septicemia cannot occur at all. The said finding of the Department of Microbiology also seems to be in favour of the petitioner.

17. So far as the legal position as requires under Section 197 CrPC, of a previous sanction not having obtained before initiation of a criminal prosecution is concerned, it is relevant to refer to the provision of law as it stood prior to 1973 i.e. under the old Criminal Procedure Code :

“197. Prosecution of Judges and public servants. - (1) When any person who is a Judge within the meaning of Section 19 of the Indian Penal Code, or when any Magistrate, or **when any public servant who is not removable** from his office save by or with the sanction of a [State Government] or [the Central 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.”

18. A perusal of the aforesaid provision under the old Act clearly reflects that previously sanction would be required only in cases where the accused person was still a public servant on the date when the Court was to take cognizance that is to say that in the event of the accused official retiring from service or getting terminated from service, he would be seized to be a public servant from the said date and therefore previous sanction was not required before cognizance is taken. However, under the new Act, Section 197 stood amended and it included all those persons who are or were public servants while committing the act in discharge of their official duties, the previous sanction was mandatory from the Govt. for taking cognizance against such officials. For ready reference Subsection 1 of Section 197 of the new CrPC, 1973 is reproduced hereunder:

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.”

19. A plain reading of Section 197 itself clearly indicates that this section is mandatorily applicable to all those persons who is or was a public servant at the time of commission of the offence. It has also a plain and simple understanding that a person who either has retired from service or is terminated from service would also have the protection as envisaged under this Act. It is relevant at this juncture to refer to the decision of the Hon'ble Supreme Court in the case of **State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew** reported in **(2004) 8 SCC 40** wherein the Supreme Court in Paragraphs- 16 to 19 has held as under:

“16. The correct legal position, therefore, is that an accused facing prosecution for offences under the Old Act or New Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. But the position is different in cases where Section 197 of the Code has application.

17. Section 197 (1) provides that when any person who is or was 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 on 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 and (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.

18. We may mention that the Law Commission in its 41st Report in paragraph 15.123 while dealing with Section 197, as it then stood, observed:

"it appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant".

It was in pursuance of this observation that the expression 'was' come to be employed after the expression 'is' to make the

sanction applicable even in cases where a retired public servant is sought to be prosecuted.

19. Above position was highlighted in *R. Balakrishna Pillai v. State of Kerala* (AIR 1996 SC 901) and in *State of H. P. v. M. P. Gupta* (2004 (2) SCC 349)."

20. So far as whether the act on the part of the petitioner would fall within the ambit of discharge of his official duties is concerned, it would be relevant to refer to the judgment of the Supreme Court in the case of **State of Himachal Pradesh Vs. M. P. Gupta** reported in **(2004) 2 SCC 349** wherein in Paragraphs 12 & 13 it has been held as under:

"12. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in *Matajog Dobey v. H.C. Bhari* (AIR 1956 SC 44) thus: (AIR p.49, paras 17 & 19)

"The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty ... there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

13. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to official to which applicability of Section 197 of the Code cannot be disputed.”

21. In the light of the authoritative decisions in the aforesaid two judgments and also taking note of the judgments which has been referred to and relied upon by the Supreme Court in these two judgments it would clearly lead us to the conclusion that previous sanction before taking cognizance is also necessary even when the services of the accused stood terminated on the date when cognizance was being taken by the Magistrate.

22. Thus, in view of the aforesaid decisions and the fact that the petitioner's services were terminated on 13.11.2014 in respect of the offence which had occurred on 08.11.2014 and though the cognizance of which was taken later, it would still require sanction from the Govt. before the petitioner is prosecuted for those offences which clearly falls within the ambit of discharge of official duties. In the absence of obtaining prior sanction, the entire prosecution case becomes *ab initio*, void and becomes unsustainable.

23. So far as to what extent this Court under Section 482 CrPC can exercise its discretionary powers while deciding a petition seeking quashment of the criminal prosecution is concerned, it would be relevant at this juncture first to refer to the land mark decision of the Supreme Court in the case of **State of Haryana and Others Vs. Bhajanlal and Others** reported in **1992 Supp (1) SCC 335** wherein in Paragraph - 102 while laying certain guidelines, sub para-3 & 6 in the said judgment squarely fit to the facts of the present case which for ready reference are reproduced hereunder:

“102. (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a

criminal proceeding is instituted) to the institution and continuance of the proceeding and /or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.”

Further the Hon’ble Supreme Court in the case of *State of Orissa Vs. Ganesh Chandra Jew* (supra) in para-20 and 21 has held as under :

“20.It is no doubt true that at the threshold interference by exercise of jurisdiction under Section 482 of the Code has to be in very rare cases, and this case appears to be of that nature. It fits in with Category (7) of broad categories indicated in *State of Haryana v. Bhajan Lal*. It is to be noted that though plea regarding non-complaint before the Magistrate was specifically taken to justify interference, the High Court has not dealt with this aspect at all thereby adding to the vulnerability thereof.

21. The continuance of the proceeding by way of prosecution in this case would amount to abuse of the process of law.”

Again in one of the recent decisions in the case of **Umesh Kumar v. State of Andhra Pradesh** reported in **(2013) SCW 6062** the Supreme Court while discussing the circumstances under which the powers under Section 482 CrPC has to be exercised has held that such petition can be entertained or filed even before the charges were framed as is the case in hand.

24. Once when we reach to the conclusion that the entire prosecution initiated by the State is bad in law on account of the non compliance of the mandatory requirement under Section 197 CrPC, the entire prosecution case itself so far as the petitioner is concerned is totally without any authority of law. In the said circumstances, permitting the petitioner to undergo the trauma of trial when prima facie the entire prosecution itself is bad in law, non-interference at this stage by the High Court would amount to miscarriage of justice, an abuse of the process of law and also in the long run would also be detrimental to the prosecution side.

25. For the aforesaid reasons, this Court does not have any hesitation in reaching to the conclusion that the alleged act committed by the petitioner was while acting in discharge of his official duty and admittedly no previous

sanction was obtained before initiating prosecution case against him. Therefore, the entire case of the prosecution is not sustainable.

26. Accordingly, the present CrMP is allowed. The entire criminal prosecution against the petitioner arising out of the FIR dated 11.11.2014 registered as Crime No. 350 of 2014 at Police Station Chakarbhata, Bilaspur and the subsequent prosecution case in Sessions Trial No. 37 of 2015 stand quashed.

27. It is made clear that the respondents State shall be free to take previous sanction of the State Govt. in this regard if it still desires to prosecute the petitioner and in the event of obtaining sanction, they would be at liberty to further prosecute the petitioner. It is made clear that this Court has not given any opinion on the merits of the case as the prosecution case was not sustainable on the preliminary objection itself and the merits of the case is still left open to be considered and adjudicated upon at a subsequent appropriate stage if the situation so arises.

28. With the aforesaid observation, the present CrMP is allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge