

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 288 of 2017**

*{Arising out of Judgment 11.07.2017 passed in Writ Petition (Cr) No. 12 of 2017
by the Learned Single Judge}*

Purushottam Sao, aged about 31 years, S/o Shri Barun Sao, Assistant Clerk,
Gramin Sewa Sahkari Samiti Maryadit, Gadhfuljhar (Regd. No. 1350) R/o Village
Kudaribahara, Police Station Basna, Revenue Tahsil Basna, Pin 493554, District
Mahasamund, Chhattisgarh.

---- Appellants**Versus**

1. State of Chhattisgarh, Through Officer-in-Charge, Police Station Basna,
Revenue Tahsil Basna, Pin 493554, District Mahasamund, Chhattisgarh.
2. Manager, Gramin Sewa Samiti Maryadit, Gadhfuljhar (Regd. No. 1350) District
Mahasamund, Chhattisgarh.
3. Deputy Registrar, Cooperative Societies, Mahasamund, District Mahasamund,
Chhattisgarh.

---- Respondent

For Appellant	:	Shri V.G.Tamaskar, Advocate.
For Respondent/State	:	Shri R.K.Gupta, Deputy Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****21/11/2017**

1. This writ petition is against an order by which the learned Single Judge refused
to interfere with the continuance of a criminal case for offences punishable under
Sections 420 and 409 of the Indian Penal Code.

2. The plea of the Appellant/Writ Petitioner is that he is not liable to face trial or further proceed with the criminal case except with sanction under Section 197 of the Criminal Procedure Code.
3. The learned Single Judge, making reference to different precedents laid down by the Apex Court, held that this is not a fit case where jurisdiction under Article 226 of the Constitution would be exercised to the aid of the Petitioner. Thereby the learned Single Judge dismissed the writ petition, leaving open all the contentions of the Petitioner to be raised at the appropriate time in accordance with law.
4. In support of this appeal, the learned counsel for the Appellant, apart from referring to the decisions of the Apex Court, in **D.T.Virupakshappa v. C. Subhas**; AIR 2015 SC 2022 and **N.K.Ganguly v. Central Bureau of Investigation, New Delhi**; 2016 6 SCC 734, and the decision of the Rajasthan High Court in **Narottam Lal v. State of Rajasthan**; 2017 Cri.L.J 3111, argued for the position that this is a case where the prosecution cannot continue without sanction under Section 197 of the CrPC. The premise on which this argument is extended is that the allegations against the Petitioner are in relation to his activity as an employee of a cooperative society to which the provisions of the Chhattisgarh Cooperative Societies Act, 1960 applies and in terms of Section 87 of that Act, every employee of a Cooperative Society is a public servant as defined in Section 21 of the IPC. This submission forms the foundation of the plea that sanction under Section 197 of the CrPC is absolutely required to prosecute the Petitioner.
5. The learned Deputy Advocate General, referring to the judgments of this Court in Writ Appeal No. 315 of 2015 (decided on 03.05.2017) and Writ Appeal No. 576 of 2015 (decided on 17.08.2017), argued for the position that an intra-Court appeal would not lie in terms of the provisions of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, because the impugned judgment of the

learned Single Judge is an order touching the criminal jurisdiction and therefore not a matter which could be treated as a civil proceeding for the purpose of an appeal under that provision.

6. The learned Single Judge took note of the contentions of the Petitioner and the State as well as the allegations against the Petitioner and decided that the issue need not be considered under Article 226 of the Constitution. We do not find any legal infirmity with the said approach because the plea of absence of sanction or defect in sanction are matters which would give rise to a mixed question of facts and law, going by the judicial precedents governing that field. In that premise, such question could be raised as part of the substantial defence of an accused in a criminal case. It cannot also be ignored that in a given case, the question whether the allegations may constitute matters for which sanction is required; and the question whether a particular transaction is one which is in the official domain; would be germane in the prosecution. Still further, the question of grant of sanction or effect of non obtaining of sanction are matters which the trial Court can adjudicate. This is the well settled principle of law.
7. For the aforesaid reasons, notwithstanding that any appeal to the Division Bench does not lie against the impugned order of the learned Single Judge refusing to interfere with the criminal case, we do not find any legal infirmity or jurisdictional error in the learned Single Judge having refused to exercise authority under Article 226 of the Constitution and consequentially preserving all the contentions of the Petitioner to be raised in the appropriate jurisdiction in due course.
8. Before parting, we may record that the learned counsel for the Petitioner also made reference to Annexure P/5, which, according to him, is the resolution of the Society regarding the conduct of the Petitioner. However, learned Deputy Advocate General submits that it merely records the views of some of the members of the Society in the form of a resolution and has no impact on the

prosecution. We leave open that issue as well to be considered in the appropriate jurisdiction.

9. For the aforesaid reasons, we do not find any ground to interfere with the impugned order of the learned Single Judge through this appeal.

10. In the result, this appeal fails and is dismissed without prejudice to the Appellant-Petitioner's right to raise all requisite objections before the criminal Court in accordance with law.

Sd/-
(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-
(Sharad Kumar Gupta)
JUDGE