HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE Nos.1101 & 1149 of 2016

COMMON ORDER:

The revision petitioners in Crl.R.C.No.1101 of 2016 are accused persons 1 to 4 and 7 to 9 and the sole revision petitioner in Crl.R.C.No.1149 of 2016 is accused No.6 respectively of PRC.No.7 of 2016 (SR.No.3164 of 2015) on the file of I Additional Chief Metropolitan Magistrate-cum-Committal Magistrate, Hyderabad.

2) The committal proceedings are the outcome of report of the revision 2nd respondent-defacto complainant Sri V. Sudhakar in crime No.912 of 2014 dated 03.11.2014 of Saifabad Police Station under Section 3(i)(ix) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') of even date for the alleged occurrence prior to that date at the Insurance Regulatory and Development Authority (IRDA) Office, Parisrama Bhavanam, III Floor, Basheerbagh, Hyderabad, State of Telangana and from the crime registered by the Sub Inspector of Police, Saifabad Police Station for the offence supra and the C.D. file handed over to the Assistant Commissioner of Police, Saifabad Division for investigation. It is from the said investigation final referred report as mistake of fact was filed by the Assistant Commissioner of Police, Saifabad Division under Section 173 Cr.P.C. and intimated to the defacto complainant.

3) It shows from the final referred report that, there are as many as 13 accused mentioned in its column No.12 who are the members, Senior Joint Directors, Assistant Directors, Junior

Officer, Officers on Special Duty and Deputy Director of IRDA which is an autonomous body of Government of India, all named individually with that status and the 13th accused Income Tax Officer named individually and with that status. The original FIR registered was by the Saifabad P.S. supra from report of the de facto complainant supra mentioned against 10 accused, who are A.1 to A.10 among the above and not against A.11 to A.13 of the above. So far as against the others particularly naming A.11 and A.12, the defacto complainant given another report to the Charminar P.S. on 16.03.2015 for the alleged occurrence on 03.12.2014 covered by crime No.60 of 2015 under selfsame provision of the Act by the Sub Inspector of Police, Charminar P.S., who handed over the C.D. file to the Assistant Commissioner of Police, Charminar Division and the same referred it appears for want of jurisdiction to the Saifabad P.S and therefrom the original 10 accused made to 13 accused supra and the final report dated 20.05.2015 from the investigation therefrom against all referred as mistake of fact that also obtained accord from the Commissioner of Police in the proceedings dated 08.05.2015.

4) The referred report reads that the complainant in his report, who sought against A.1 to A.10, added some more accused, not all accused are connected to license procedure which is looked after by intermediaries of the Department functioning under A.5 Senior Joint Director, IRDA and one of the accused belongs to SC (A6) and the offence does not attract against him. The complainant misconceivedly relied on delays (with regard to renewal of composite license sought by up gradation), delays or neglect attributed not based on his caste by

the officials and not even any denial, as license has been renewed. There is also an observation in the final report that the investigation shows the complainant wanted to coerce the IRDA officials to renew his license under the assumptions that it may not be renewed by wanted to put them under stress, under threat of criminal case being hangover on their head to get his license renewed. A.8 is Personal Secretary to the Chairman of IRDA, A.9 and A.10 working on deputation being repatriated to the respective insurance companies soon. The complainant sought action against 12 officials of IRDA and one Income Tax Officer as if all are responsible on the 2 issues for renewal of upgraded composite IRDA license and furnishing of adverse information to IT official. Investigation further reveals that it was not the only license of the complainant (entity) but also of other 7 brokers, that were pending with the IRDA officials, who have to follow the procedure contemplated by the Act and Rules in that regard. Thus the allegations against A.1 to A.13 are under misconception in ultimately referring as mistake of fact from the evidence collected during investigation, by also saying that the investigation reveals the ingredients of Section 3(i)(ix) of the Act no way attracted to show any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance to a member of SC or ST.

5) It is from the service of notice pursuant to the referred final report, a protest application was filed in SR.No.3164 of 2015 in the above crime on 01.10.2015 only against 9 accused, among the 13 accused covered of the referred report viz., as A.1 Ram Prasad, Member IRDA, as A.2 H.Ananthakrishnan, Joint

Director IRDA, who was originally not named among the 13 accused of the referred report, as A.3-Suresh Mathur, Senior Joint Director IRDA, as A.4-R.S. Jagpal (A.5 of 13 accused of referred report), as A.5-M.Pulla Rao (A.6 of 13 accused of referred report), as A.6-D.D. Singh (A.2 of 13 accused), as Dr. Mamta Suri (A.4 of 13 accused), as G. Siva Ramakrishna (A.7 of 13 accused) and as T.S. Vijayan (A.11 of 13 accused).

6) Before coming to the contents of the protest petition supra it is for better appreciation needful to reproduce the contents of the original police report dated 13.11.2014 of SHO, Saifabad Police Station of the protest petitioner/defacto complainant, the original report is on the printed letter head of the Chairman of the Excellent Insurance Broking Services Limited (for short 'the entity') with email address in short form of it. The person signed is Sri V. Sudhakar in his police report supra is by name as V.Sudhakar referred as founder Chairman of the entity established in the year 1999 with share holders of 100 individuals incorporated as public limited company with paid up capital of more than 2.72 crores as one of the first batch license of IRDA in 2003. He belongs to SC (malla community) and ex-service man.

7) The scanned copy of complaint to reproduce exactly reads that:

Chairman 176 -
Excellent Insurance Broking Services Limited
E-mail:chairman@eibroking.com

3rd November, 2014

To

The Station House Officer
P.S. Saifabad, Hyderabad

Sir,

Sub: Complaints - Complaint under the provisions of the SC & ST (Prevention of Atrocities) Act, 1989 against the named officials working in Insurance Regulatory & Development Authority (IRDA), Hyderabad - Request for taking necessary action against them as per the provisions under the Act - Reg.

Ref: 1. Confirmed Fax message dated 14/05/2013 addressed to the Chairman, IRDA (Copy Enclosed)
2. Written Representation dated 15/07/2013 submitted in person to the Chairman, IRDA (Copy Enclosed)

@@@

1. I, V. Sudhakar, S/o Late Ayyappa, Aged 65 years, am the Founder - Chairman of M/s. Excellent Insurance Broking Services Limited established in the year 1999 with shareholders base of 100 individuals, incorporated as Public Limited Company under the provisions of Companies Act with a paid up capital of Rs.2,72,60,000/- and initially licensed by Insurance Regulatory & Development Authority (IRDA) in 2003 (one of the First Batch Licensees). I belong to Scheduled Caste (Mala) community and an Ex-Serviceman. With sheer dent of discipline, honesty and loyalty I started the above Company. During the course of the business operations, my Company having discharged its duties to the best of its ability all with discipline, transparency, straight forwardness could command best image and respect in the Insurance Industry. Further, in appreciation of the best services rendered by my Company, many of its clients base which includes 15 Government bodies such as A.P. Tourism Development Corporation, Hyderabad Metro Development Authority, Hyderabad Metro Water Supply and Sewerage Board etc., 342 Corporate and small and medium Enterprises besides several hundreds of individuals placed their appreciation on record in terms of appreciations issued by them from time to time and the same is part of the record of my Company, and the same are verifiable.

2. In the day today business transactions, my Company is required to function in compliances of various regulations issued by the Regulator i.e., the IRDA. In fact, in the initial stage itself for grant of licence, only having satisfied compliance of the regulations, licence was granted in the year 2003 and renewed from time to time. In 2013 my company also upgraded its operations duly obtaining Composite Brokers Licence.The following are the brief financials involved in obtaining / maintaining the licence:

Contd. PAGE 2

Sudhakar

R. No. 216/4/15
ved by P.W.1
31/12/15
Exhibit No. P40

ACMM

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Hyderabad -500081, Ph: 040-44552501, Fax: 040-44552545
www.eibroking.com

Chairman
Excellent Insurance Broking Services Limited
E-mail:chairman@eibroking.com

(a) Annual License fee Rs.2,35,494/-.
(b) IBAI membership fee Rs.50,000/-.
(c) Deposit with IRDA Rs.50,00,000/-.
(d) Compulsory Professional Indemnity Insurance for liability limit of Rs.12.50 Crores.
(e) Paid up capital of Rs.2,72,60,000/-.

Apart from the above, the expenditure incurred for the required infrastructure facilities and operations to be carried out are:

(i) Office space of 4000 sq. ft. which costs monthly rent of Rs.2,16,169/- apart from rental deposit of Rs.9,98,422/-.

(ii) Qualified and trained manpower requiring offering of best salary packages and on this count the petitioner company incurs an amount of Rs.24,22,850/-.

(iii) On the other establishment expenses such as conveyance, traveling and communications, the petitioner's company incurs on an average amount of Rs.3.75 Lakhs per month.

(iv) Towards IT and Software requirement, the petitioner company incurred one time expenditure of Rs.25.00 Lakhs and on an average maintenance charges of Rs.15.00 Lakhs per annum.

(v) Compulsory training and passing of personnel in the National Insurance Academy, Pune at Rs.50,000/- per person for initial training followed by renewal training for every 3 years at Rs.15,000/- per person. The petitioner company so far incurred an amount of Rs.10.00 Lakhs.

(vi) Expenditure incurred in Bangalore and Mumbai branches for their establishment Rs.20.00 Lakhs in addition to monthly salary expenditure of Rs.3.00 Lakhs and other office expenses Rs.50,000/- per month.

3. Thus, initially for obtaining broker's licence and for continuing its regular business for all these 12 years, an amount of about Rs.36.00 Crores till date @ an average of Rs.3.00 Crores per year was already incurred.

4. The licence granted to the Insurance Brokers is to be renewed in the intervals of every three years. The licence granted to my company as such fell for renewal on 29/01/2012. Therefore, the application was filed for renewal on 18/11/2011. With an oblique ulterior motive to see that the renewal date is expired, at 11th hour on 23/01/2012, raised several queries on the renewal application. Yet the licence was renewed on 31/01/2012 (Copy Enclosed) after the due date of renewal. At the same time, an order was sent to my company imposing penalty of Rs.10,000/- on the allegation of violation of certain regulations besides a warning with respect to

Contd. PAGE 3

Psudhakar

Chairman
Excellent Insurance Broking Services Limited
E-mail:chairman@eibroking.com

-178-

transmission of shares of my wife on her demise. This act was done by the officials of the IRDA with a view to disqualify my company and consequently to deny the licence.

The penalty as well as a warning order imposed was contested by me in the Appeal filed to the then Chairman, IRDA Sri J. Hari Narayana, IAS explaining the irregularities committed in an erroneous manner imposing such a punishment. The appeal was rightly examined by the then Chairman and having come to a conclusion that the order was really an irregular and erroneous one pulled up the officials and passed a reasoned order allowing the appeal for return of penalty amounts and expunging the warning on 18/05/2013 (Copy Enclosed). In this connection, the then Chairman also initiated corrective measures in the matter by initiating steps against the erring officials involved.

Due to the above incident happening the following officers bore grudge as such were bent upon to cause atrocious acts against me in one or the other form and ultimately to see that I am disqualified and denied of my company's qualification for grant of upgraded Composite Broker Licence, thus, awaiting to attempt to cause such atrocity:

Sarvasri
(a) M. Ram Prasad, Member
(b) D.D. Singh, Member
(c) Suresh Mathur, Sr. Joint Director
(d) Dr. (Ms.) Mamta Suri, Sr. Joint Director
(e) Randip Singh Jagpal, Sr. Joint Director
(f) M. Pulla Rao, Sr. Joint Director
(g) Shiva Ramakrishna, Asst. DirectorV.S. Narendra Chandra, PS to Chairman
(h) V. Sarvothamudu, OSD (i) B.V. Sastry, OSD

5. Therefore, on my company filing application for grant of upgraded Composite Broker licence on 14/12/2012 (Copy Enclosed) before the then Chairman Sri J. Hari Narayana, IRDA, which was endorsed by him the above named officers intentionally kept the application pending inspite of various persuasions, till his retirement, knowing the fact that in the event the application was processed during the tenure of him, it will be considered and granted.

As a part of their well designed ulterior motive only to further deny and deprive the due grant of upgraded licence, in an irregular manner a notice of inspection was issued on 02/05/2013 (Copy Enclosed) received on 03/05/2013 for 3 days from 06/05/2013 to 08/05/2013 as against the usual 10 days of notice as per Regulations. The inspection so conducted in a most hasty manner without giving even breathing time caused untold mental agony and anxious movements to the officers and staff of my company. The inspection caused went off without any objections / clarifications raised as such nothing was found against my company.

Contd. PAGE 4

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P40

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-179-

Even after of 3 months of inspection and other formalities complied as per Regulations, no steps were taken on pending application for grant of upgraded Composite Broker Licence. It is only on 18/06/2013 (Copy Enclosed) a communication was sent informing in-principle approval of licence subject to satisfaction of complying the statutory (a) deposit of Rs.50.00 Lakhs (b) Compulsory Professional Indemnity Insurance for liability limit of Rs.12.50 Crores (c) Paid up capital of Rs.2,72,62,000/- besides surrendering original of Direct Broker Licence. The same were complied immediately thereafter on 21/06/2013 (Copy Enclosed) and bonafidely awaiting the grant of formal licence. That even after lapse of more than 20 days when there was no response inspite of several requests made in between, and on the basis of bonafide information gathered that there will not be any response in immediate future, my company was compelled and constrained to approach filing W.P. No. [illegible]6/ 2013 on 10/07/2013. After knowing filing of the above case, the officials of IRDA sent a communication by e-mail on 15/07/2013 followed by formal licence on [illegible]/07/2013 by courier. In the meantime, my company suffered huge business loss on account of non-possession of the licence without which no business is expected to be carried as it would amount to violation of regulations.

6. Not satisfied with the above, in a continued attitude of harassing me with the same intention, the officials also caused Show - Cause Notice No. IRDA/I&C/SCN/306/Excellent/2014/8 dated 28/10/2014 (Copy Enclosed) raising all untenable issues, which is evidently goes to show that the attempt was made by them making the issues out of non-issues that too after long lapse of nearly 14 months of inspection, further only with an intention to initiate action in terms of Regulations 38(IRDA (IB) Regulations 2002, to cancel the license inforce. (Copy enclosed)

7. Apart from the above, the officials of IRDA instigated and influenced the concerned officials of IT Department to cause an IT notice under Sec, 133 (6) of IT Act for the Assessment Year 2012-13 even after completion of Assessment under Sec. 143 (1) of the Act with a false allegation stating as "information received in non-PAN cases from CIB as certain deposits were found in your account" (my personal account). It is a clear harassment against me since I come under the category of Senior citizen against whom such scrutiny norms were exempted vide Press Release No. 402/92/2006-MC (07 of 2011). In fact, no such notice could be issued inspite of completion of assessment under Sec. 143 (1) dated 28/09/2012 for the Assessment Year 2012-13 and further exemption granted for senior citizens vide Proceedings No. 402/92/2006-MC (07 of 2011).

Incidentally the notice F. No. 133(6)/CIB//2013-14 dated 28/10/2013 received by me on 06/11/2013. In the said notice it was also directed to furnish the information called for urgently as otherwise penalty of a sum of Rs.100/- for every day will be imposed. I submitted the information called for immediately within the stipulated time on 11/11/2013. Incidentally from the date of receipt of notice i.e., 06/11/2013 effectively no time is left and within two working days from that date on 11/11/2013, the information sought for was submitted.

Contd. PAGE 5

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P40

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-180-

In that connection having observed that the whole episode is concocted one only to harass me, I also approached and filed a written representation on 22/11/2013 to the Chief Commissioner, Income Tax - III of Grievance Redressal Cell, Hyderabad. In the said representation I was also constrained to request for thorough enquiry in the matter while explaining incident in details. The receipt of my representation was also recorded as per the procedures as "ACK No. 694221113086979" of the same office. As no reply was received, I personally visited the office of Sri P. Madhu, ITO, Ward-6(3) along with

Dr. K. Muralidhara Reddy, Sri G. Vikramasimha Reddy, Chartered Accountant, Sri M. Srinivasa Murthy and Sri V.N. Rao and met him to find out about the reply submitted by me with reference to Notice dated 28/10/2013 and insisted him to give immediate reply on the pain of making a complaint against him. While informing that he had also received copy of the reply, Sri Madhu, ITO replied stating that in fact the issue does not come under his jurisdiction but he was pressurized and forced to do so by the officials of IRDA. Further he also made me to understand that he will apprise the factual position to his superior officer The Chief Commissioner of Income Tax - III and to see that a suitable action is taken in the matter. Stating so, he has also furnished a copy of F. No. CCIT-III/Hyd/Grievance/ / 2013-14 dated 19/12/2013 issued by Sri Madhura Nayak, Asst. Commissioner of Income Tax (H.Qrs.), O/o the Chief Commissioner of Income Tax-III, Hyderabad which specifically states as:

"I am directed to enclose herewith the Grievance petition received from Sri V.Sudhakar, Jubilee Hills, Hyderabad for the AY 2012-2013, as the territorial jurisdiction vests with CCIT-II, Hyderabad charge."

However, subsequently in response to my representation submitted to the Chief Commissioner of Income Tax - III, grievance Redressal Cell, a reply to the same vide F. No. CCIT-II/Tech/GP/2013-14 dated 16/01/2014 which speaks in a different tone, contrary to the contents informed in F. No. CCIT-III/Hyd/Grievance / /2013-14 dated 19/12/2013. The said communication evidently indicates the inimical stand adopted against me only with a criminal intent to victimize me. In other words, it endorses the action initiated by Sri P. Madhu, ITO, Ward-6 (3), Hyderabad which goes contrary to the asserted stand taken in communication F. No. CCIT-III/Hyd/Grievance/2013-14 dated 19/12/2013 though in a very clear terms states that the said issue vests in the territorial jurisdiction with CCIT-II, Hyderabad Charge.

8. By the above acts of the officials of the IRDA, it is abundantly clear that these acts of the officials of IRDA in discharge of their duties which was not only out of intended plan to harass me but also obviously attracts committing the atrocious acts against me under the provisions of Sec. 3 (1) (ix) of the Act 1989. Thus, I was subjected to undergo the atrocious acts committed at the hands of above named officials of IRDA.

Contd. PAGE 6

Sudhakar

140


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9. In fact, at one point of time having exhausted all my patience for over a period of more than a decade, I was also compelled and forced to bring the atrocious acts committed by the above named officials, to the highest authority, the Chairman by a confirmed fax message on 14/05/2013 duly bringing it to the notice the harassment and atrocities meted by me which attracts of penal action under the provisions of the SC & ST (Prevention of Atrocities) Act, 1989 followed by yet another detailed representation submitted on 15/07/2013 (Appointment mail copy enclosed) in person to the Chairman. No steps were taken by that Authority even. For all the above incidents the witnesses are Dr K Muralidhara Reddy, Principal Officer & Managing Director and Mr A M Rao, Compliance Officer to IRDA & Joint Managing Director.

In the circumstances, the position explained above, I request your benign authority kindly to take action against the above named officials as per law under the provisions of Sec. 3 (1) (ix) of SC & ST (Prevention of Atrocities) Act, 1989 in the interest of justice.

Thanking you,

Yours truly,

V. Sudhakar

Encl: As above 3/10/2014

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With reference to the report and from the police final referred report, coming to the protest petition contents, it is almost replica of most of the contents of the report with no need to reproduce, but for confining to A.1 to A.9 in the protest petition referred supra (even at the cost of some repetition and with some developed versions) in alleging that A.1 to A.7 of them entered into a criminal conspiracy to involve the complainant in malicious and vexatious legal proceedings and further to give false information while processing the files of complainant for issuance of broker license/composite broker license to injure the business interest of the complainant on the ground of he being a member of SC and the other 2 more accused (A8 & A9) joined the conspiracy subsequently and they committed several acts and omissions causing injury to the complainant, which amounts to offence under the Act. It further speaks that the license granted to the complainant (entity) was in the year 2009 was to expire on 29.01.2012 and the complainant (entity) applied for renewal in the required format well in advance on 18.11.2011 in Form-A and as per various circulars of IRDA. However above accused 1 to 9 in pursuance of the <u>common intention to harm the interest of the complainant company</u>, not granted the license in 30 days as per Regulation 13 of IRDA Insurance Brokers Regulations, 2002 despite the complainant entity answered all the required criteria for such renewal and on the contrary after said 30 days raised frivolous objection by letter dated 23.01.2012 which is 6 days before expiry of license on 29.01.2012 to discriminate on the ground of complainant being a person belonging to SC. The information relating to the objections raised in their letter supra was available with IRDA, thereby not required to furnish. However complainant entity once again furnished with explanation vide letter dated 23.01.2012. However pursuant to their conspiracy, subjected the complainant entity to vexatious proceedings by false information to the Chairman of IRDA in processing the file for causing injury and annoyance to the complainant with their oblique motive to make complainant entity to suffer penalty and therefrom the then Chairman imposed penalty and warning on the complainant entity dated 31.01.2012 and when the complainant entity contested by filing appeal, the Chairman by order dated 06.03.2012, as per communication letter dated 23.04.2013, expunged the warning and ordered return of penalty of Rs.10,000/- paid by the complainant entity by recording the misdemeanor of A.1 to A5 and A.7 in placing information contrary to records. The accused with more grudge against the complainant entity further decided to harm, kept pending the application of the complaint till retirement of the Chairman and on 20.02.2013, issued letter signed by A.3-Suresh Mathur dated 28.01.2013 seeking information already furnished even not necessary for processing the application of composite broker license, the complainant entity furnished the documents under letter dated 31.01.2013 and subsequently some more requirements sought by respective 4 letters that were answered by the complainant entity every time and also stated of the information available with IRDA and accused prepared ground for asking the information in bits and peace-meal instead of one time seeking to harass as complainant belongs to SC community. The complainant entity filed W.P.No.20176 of 2013 and on receipt of notice in the writ petition, the composite broker license was upgraded.

9) Accused Nos.1 to 7 got a notice dated 28.10.2013 issued on false and frivolous grounds by using material furnished by the complainant entity relating to their income tax returns and one P.Madhu, ITO, who has no jurisdiction issued notice and information furnished by IT Department under RTI Act reveals said notices issued under instructions of Commissioner-III who is no other than wife of H.Ananthakrishna and the complainant (entity) addressed reply to the ITO. The income tax file of complainant entity picked up by computer system for scrutiny every year from the assessment years 2004-205 till date and complainant entity's grievance is responded on 16.01.2014 saying assessment officer has no control over selection of cases for scrutiny under Computer Aid Scrutiny System (CASS), but based on certain parameters fixed by Central Board of Direct Taxes and no motives or adverse conclusions can be drawn as suggested by the complainant (entity).

10) After retirement of the Chairman J. Hjari Narayana; G. Siva Ramakrishna and T.S. Vijayan who succeeded, joined hands with others, gave notice and inspected the premises during 06/08.05.2013 by team of 3 officials and discovered no irregularity and no findings of inspection required by regulation No.32 communicated which made the complainant later to get license file writ petition referred supra and they renewed the composite license later, and to cancel it if possible, they again issued notice dated 19.02.2014 and again another show cause notice dated 28.10.2014, which made to file the police report on 03.11.2014 covered by crime No.912 of 2014. The I.O. that is ACP, Saifabad Division filed the referred report as mistake of fact

despite clinching oral and documentary evidence to file charge sheet.

11) The protest petition therefrom particularly in relation to the protest to the final report as mistake of fact, submitted as Paras 13 and 14 that:

> "It is required to submit here that the IRDA in its letter dated 11/02/2015 addressed to National Commission for Scheduled Castes has submitted the dates of renewal of licenses of 10 Insurance Brokers and as per the same the licenses of 3 Insurance Brokers, named in the above list as yet to be renewed, were renewed much before 24/01/2015. Copy of the same is submitted for your kind perusal. This evidences that the Investigating Officer has submitted his Final Report based on the false information submitted to him by the officials of IRDAI in order to protect themselves. The Complaint has clearly brought to the notice of the Investigating Officer the fact that since the license was not being renewed even as on 27/01/2015 because of the malafide intention of IRDA officials, the Complaint has approached the Hon'ble High Court filing W.P.No.1210 of 2015, in which the Hon'ble High Court was pleased to pass the orders on 28/01/2015 as under:
>
> "The learned counsel on instructions submits that the application of petitioner dated 01/12/2014 for renewal is being favourably considered and renewal orders would be passed. It is expected that without stifling the business of the petitioner the order or decision of the second respondent is communicated forthwith to the petitioner." It may kindly be noted that without intervention of the Hon'ble High Court the license could not have been renewed by the IRDA officials. As such the Investigating Officer drawing erroneous conclusion that the renewal has been attended by IRDA officials itself is false and ill-motivated. Because the fact that the IRDA officials have not renewed the license on their own, while the licenses of 4 Insurance Brokers were renewed much before this date, clearly establishes the harassment meted out to the complainant being an SC Entrepreneur and in fact the Investigating Officer has mistaken the facts placed before him intentionally with sole objective of protecting the accused from the

case. In view of the facts and the circumstances mentioned above, complainant is filing this protest petition.

Petitioner/complaint submits that the omissions and commissions of the accused in relation to the petitioner attract the ingredients of the offence complained of and all such actions of the accused are motivated and in pursuance of the criminal conspiracy; and not in the usual course performance of their duties. In spite of their being clinching evidence police by deliberate misinterpretation of facts has turned the tables against the petitioner by falsely projecting as if the allegations against the accused are purely related to their official duties and concluding that there is no evidence that somebody has furnished false information to public servant to misuse their power to the detriment of the complainant in spite of producing documentary evidence which demonstrates that the police is not inclined to investigate that case in right perspective but anxious enough to close the case as mistake of fact by making comments against the complainant which are uncalled for and therefore the final report deserves to be rejected. Petitioner submits that he is ready to produce all the necessary evidence to prove the guilt of the accused beyond all reasonable doubt for the offence u/s 3(i)(ix) of SC/ST(POA Act) 1989 r/w 120 B IPC."

12) On the protest petition supra, the sworn statement of V.Sudhakar (LW.1) as Promoter Chairman of the complainant (entity), statement of Sri A.Madhusudan Rao (LW.3), Joint Management Director of the complainant entity brought on record as PWs.1 and 2; whereas in the protest petition there are 4 persons mentioned including as LWs.2 and 4 (Dr. K.Muralidhar Reddy—Managing Director of the complainant (entity), and CAGV Reddy-Senior Vice President Finance of the complainant (entity) by mentioning 44 documents in the protest petition.

13) The revision impugned order passed by the learned Magistrate in rejecting the police final referred report as mistake of fact supra and in taking cognizance for the offence under

Section 3(i)(ix) of the Act read with Section 120 IPC against A.1 to A.4 and A.6 to A.9 by dismissing the complaint against A.5 under Section 203 Cr.P.C., just to reproduce from Para Nos.4 to 8 of the impugned order reads that:

4. The complainant has protested the Final Report and examined himself, his Joint Managing Director, Mr.A.Madhusudhan Rao, his Executive Director (Finance) Mr.G.Viram Simha Reddy, Deputy Managing Director Mr.Vanam Narsimha Rao as Pws-1 to 4 and got marked the documents as Exs.1 to 44.

5. Heard the counsel for the complainant.

6. <u>Now the point for consideration is:</u> **Whether the accusation in the complaint make out for the offence U/sec.3(i) (ix) of the S.C & ST (Prevention of Atrocities) Act and Sec.120-B of IPC, If so the offence be taken cognizance?**

7. <u>POINT</u>: The complainant by filing his community certificate and other documents has *prima facie* established that he belongs to Schedule Caste, Mala Community and that he has been running *M/s.Excellent Insurance Broking Services Limited*. The statement of the complainant and the witnesses discloses that the officials of IRDAI caused hurdles to him while renewing and while processing the application for Broking Licence to Composite brokers, that the complainant was made to approach the Chairman IRDAI and also the Hon'ble High Court by way of Writ Petition and only then the renewal of Broking Licence was made by imposing penalty; that the Chairman had condemned the action of the IRDAI officials and ordered to refund the penalty amount by expunging warning. It is the contention of the complainant and all the witnesses that since the

the ITO, Ward-6(3) Mr.P.Madhu, who has no jurisdiction had issued notice and it is found that on the instructions of the Chief Commissioner of Income Tax-III, who is none other than the wife of Mr. H.Anantha Krishnan (A-2), he was made to issue such notice.

8. Now I look into the definition of Sec.3(i) (ix) of SC & ST (POA) Act which reads as follows: *"whoever not being a member of Schedule Caste or Schedule Tribe gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine"*.

9. The investigating officer has opined that the complainant under misconception of a fact that his licence may not be renewed, even without complying the objections approached the police and made complaint against the IRDAI officials. But the said observation of the police appear to be far from truth as seen from the statement of the complainant. The action of the IRDAI officials was negatived by the Chairman of IRDAI by his order dated 18-5-2013. This indicate that the officials of IRDAI have acted against the rules particularly in the case of the complainant. The version of the complainant that only when he filed a Writ Petition before the Hon'ble High Court when the officials neglected the process of his application to grant Composite Broker's Licence, they processed the application and subsequently made complaint to the Income Tax Department and the ITO, Ward-6(3) Mr.P.Madhu, who has no jurisdiction had issued notice on the instructions of the Chief Commissioner of Income Tax-III, who is none other than the wife of Mr.H.Anantha Krishnan (A-2).

14) The grounds of revision impugning said cognizance order of the learned Magistrate deferring to the police final report and by supporting the referred report as mistake of fact and the ingredients of Section 3(i)(ix) of the Act have no application of the facts and the complaint is not a bonafide outcome are that, the

order of the learned Magistrate to say from the protest petition and the two sworn statements as if Section 3(i)(ix) of the Act attracts, is unsustainable and erroneous, besides contrary to law and vitiated by error of jurisdiction and that it is liable to be set aside; also for the reason the license has been upgraded by IRDA in the year 2003 and later upgraded to composite broker license in the year 2013 in favour of the complainant entity which is a registered company, but not in favour of the 2nd respondent (LW.1) in the individual capacity and taking of cognizance and issuing summons ought not to have been done therefrom. It is also contended that the learned Magistrate failed to consider that there are no any overt acts against any of the revision petitioners to take cognizance of any offence against them, either in processing the application of the complainant for application to composite broker license or for the income tax department issuing notice against the complainant entity and all the petitioners are admittedly public servants and Section 21 of IRDA Act, 1999 defines their status as public servant and Section 22 of the Act gives protection for their bonafide acting in good faith in their duties and the learned Magistrate ought not to have been passed the impugned order of taking cognizance but for dismissal of the protest petition pre-cognizance proceedings under Section 203 Cr.P.C. It is also contended that the learned Magistrate should have seen that there is no sanction which is mandatory even to take cognizance and there is no whisper in this regard and there is no basis to defer with the police final report even in the impugned order of the Magistrate for nothing to ignore the investigation material from which the referred report filed and thereby sought for allowing the revisions by setting aside the impugned cognizance order.

15) Whereas it is the submission of the learned counsel for the 2nd respondent to the revision petitions that the order of the learned Magistrate taking cognizance against the revision petitioners/accused Nos.1 to 4 and 6 to 9 holds good and no way requires interference for this Court while sitting in revision and the revisions are thereby liable to be dismissed.

16) Elaborate arguments advanced by both sides also referring to Section 197 Cr.P.C. and on the requirement or not of sanction to take cognizance in the factual matrix for and against to the police final report and the cognizance order setting aside the police final report of mistake of fact for the grounds supra and also on the scope of Section 3(i)(ix) of the Act. To avoid repetition of those provisions and propositions covered by the expressions submitted on either side are being discussed contextually with reference to the facts.

17) Heard both sides as referred supra and perused the material on record.

18) Now in deciding the revision lis, it is necessary to mention that the entity by name Excellence Insurance Broking Services Limited is a public limited company, which was established in the year 1999. It has no any colour or caste or creed or sect or religion under any law or from any of the constitutional provisions or constitutional conventions including

from the international treaties and covenants to which India is one of the signatories.

19) Further, from the very police report averments of the entity on the letter head of the Chairman of the Entity referring by Sri V. Sudhakar as founder Chairman of the entity with his signatures, it is not at all his case that it is a proprietary concern of his even to have a say in such event of even styling an individual having caste, creed and religion, with any name and style, does not become other than human being.

20) Even from the very protest petition list of witnesses 1 to 4, neither LW.2-Dr. K.Muralidhar Reddy, Managing Director of the entity, nor LW.4-CAGV Reddy, Senior Vice President Finance of the entity belong to SC or ST - so also PW.2-A.Madhusudana Rao, Joint Managing Director of the entity.

21) It is therefore highly difficult to say merely because Sri V.Sudhakar the founder chairman of the entity, which is public limited company happened to be an SC by caste, the up-gradation of the process of granting composite broker license to the public limited company was delayed or neglected much less with any privy among all the officials of the IRDA for that purpose.

22) It is not even the case of said Sri Sudhakar, much less any of the witnesses examined during investigation by the Assistant Commissioner of Police, Saifabad Division or even from the protest petition evidence including of PW.2 that any of the

accused persons know the caste of LW.1 V.Sudhakar, the so called chairman of the entity.

23) It is not even the case that by their delaying the license, it will cause specific harm particularly to Sri V.Sudhakar alone and not even a case of therefrom the others including the Vice President, Managing Director and Joint Managing Director etc., of the entity are otherwise benefited.

24) A reading of Section 3(i)(ix) of the Act speaks from what is also reproduced in the referred report supra stated in its discussing of non-fulfilling of the requirement of the Act to the facts; so also from the Section is reproduced in Para 8 of the impugned order of the learned Magistrate supra, that whoever not being a member of SC and ST <u>gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of SC and ST</u>, shall be punishable with……. Here the ingredients require to satisfy to make out an offence even to take cognizance are that, the victim belongs to SC or ST and the accused shall not belong to SC or ST and the accused have knowledge of victim belongs to SC or ST and with that prior knowledge shown given false or frivolous information to any public servant and it must be with an intention to cause injury or annoyance to the member of SC or ST and further also that it is pursuant to said false or frivolous information given by the accused to any public servant, the public servant uses the same in his lawful exercise of power to the injury or annoyance of a member of SC or ST.

25) A reading together even of the police report and the police final referred report from the investigation material and the documents including Exs.A1 to A44 of the protest application nowhere discloses any of the accused persons gave any false or frivolous information intentionally being non SC and ST, to any public servant with intent to use by such public servant in his lawful exercise of power to cause injury or annoyance to said Sri V.Sudhakar much less with their knowledge that he belongs to SC and much less therefrom with any preconcert to cause harm to him. In the absence of which even he has shown that he belongs to SC within the meaning of the member of SC or ST, even taken for granted of any office note and the proceedings pursuant to which any order passed by the Chairman of the IRDA dated 31.01.2012 in imposing penalty of Rs.10,000/- with warning on the complainant (entity) which is admittedly a public limited company, for the same not even against the individual Sri V. Sudhakar. It is not even shown who put up the office note before the said Chairman and who is responsible if at all any of the information is not correct without which a bald allegation roping several officials cannot be given even a little credence to sustain to rope them with criminal liability, that too it is not a mere furnishing of incorrect information or putting up of incorrect note or more wrong note that is liable for criminal prosecution, but must be shown within the ingredients of the Section of intentional, deliberate and knowingly with absolute mens-rea and by acting with malice or ill-will to injure even not directly, at least from such information furnished with such ingredients to a public servant to use lawfully by such public servant so to cause,

that it totally lacking for passing said order by the Chairman of IRDA supra equally for the recall order of the penalty and warning by the selfsame Chairman on 06.03.2012 communicated to the complainant entity on 23.04.2013. It no way even from its reading makes out any of the ingredients required to constitute an offence under law for taking cognizance by the learned Magistrate.

26) Leave about the entity is admittedly not a member of SC or ST, and it is only one of the persons concerned with the entity if any for said V. Sudhakar to claim as member of SC or ST; it is not even shown from the bye-laws and regulations of he is responsible for day to day affairs of the public limited company. In the abence of which even under any law there is nothing to presume even for his mere status as Chairman if at all. There is thus nothing to say the ingredients of Section 3(i)(ix) attracts in the absence of showing by any of such proceedings or delay in granting license or belated grant of license there is any special harm caused to him much less exclusively much less further of that is outcome of any intentional furnishing of false information by any of the accused to use by any of the public servant against the said V.Sudhakar individually and that too on full well known of he belongs to SC or ST. In the absence of which, from his mere showing as member of SC or ST or he is chairman of the entity, it is insufficient, for the entity is not his proprietary concern as discussed supra. Thus, suffice to say, none of the ingredients of Section 3(i)(ix) are attracted to the facts of the case on hand, much less any criminal conspiracy punishable under Section 120 B IPC.

27) Therefrom, as rightly pointed out, though not with the above reasons, in the police final referred report by the I.O. in the cadre of Assistant Commissioner of Police, Saifabad Division, the same drawn missing of attention by the learned Magistrate in the impugned order even at Para 8 of the impugned order the learned Magistrate reproduced Section 3(i)(ix) of the Act. It is unknown how it could be missed attention, that too having reproduced the Section, of the learned Magistrate in passing the impugned order.

28) Further more, even coming to the furnishing of the information in relation to the income tax proceedings from any returns and its tracking through CASS by the income tax authorities nothing could be find fault with any of the accused persons even shown Sri H.Ananthakrishnan (A.2) of the protest application originally not named in the police report of the complainant dated 03.11.2014 and not even named in the other police report of the complainant dated 16.03.2015 covered by respective Crime No.912 of 2014 of Saifabad P.S. & Crime No.60 of 2015 of Charminar P.S. It is as referred supra, he is stranger to the two reports and to the police final referred report but later introduced by roping in the protest application which could have been ignored by the learned Magistrate, that too when the protest petition is in relation to express protect against the referred report and is not an altogether first time private complainant, but for on explaining the grievance of the protest against any observations of final report and giving of evidence including by explaining any versions in the previous statements during investigation before police recorded, if at all not correct, of any thing referred in the

protest petition and from evidence during protest petition that is also lacking though required from the Constitution Bench expression of the Apex Court in **Dharma Pal Vs. State of Haryana**[1] which speaks so though not in so many terms and as also laid down by this Court referring to it in **Sun Pharmaceuticals Limited Mumbai Vs. State of Telangana through P.S., Central Crime Station, Hyderabad and Another**[2] and in **S. Bala Krishna Vs. State of Telangana rep. by its Public Prosecutor High Court, Hyderabad and Another**[3].

29) Apart from it, from the very police report and investigation material covered by the referred report and even the protest petition averments of any one voice show the alleged acts of the accused complained, leave about no offence made out therefrom as discussed supra, are not outside the purview of any of the discharge of duties public servant and not shown of not integrally connected to the discharge of their duties as public servants. When such is the case sanction is required under Section 197 Cr.P.C and without which no cognizance can be taken and that could not also have been missed consideration of the learned Magistrate, and his ignoring the scope of Section 197 Cr.P.C. is unsustainable despite referring to the facts that also disclosed in the final referred report.

30) The expression of the Apex Court placed reliance by the counsel for the 2nd respondent to the 2 revision petitions in saying no sanction is required is in **Inspector of Police and**

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[1] AIR 2013 SC 3018
[2] 2016 (2) ALT (Crl.) 165 (AP)
[3] 2016 (2) ALT (Crl.) 428 (AP)

another Vs. Battenapatla Venkata Ratnam and Another[4] (Crl.A.No.129 of 2013 of 2 Judge Bench dated 13.04.2015). Said expression is the outcome of crime No.35/1999 of CB, CID Vijayawada dated 07.07.1999 from the report of the District Registrar, Vijayawada, against several sub-registrars working in various places of the State, with allegation that they conspired with stamp vendors and document writers and other staff to have their monetary benefit in their resorting to manipulation of registers and got registration of documents with old value of properties by causing wrongful loss to the Government and thereby cheated the Government and public in registering the crime for the offence under Sections 420, 468, 477-A, 120-B read with 109 IPC. The above facts are admittedly different to the facts on hand. There, the learned Magistrate in taking cognizance, from the objections raised by accused therein totally 41 persons, including the respective respondents before the Apex Court, on 03.07.2007 observed that whether sanction is required or not requires to be considered during trial for the burden of the complainant to prove that there is no nexus between the acts committed by the accused and their official duties and at this stage the question that accused acted within their duty or not from the facts cannot be decided and thereby, same is differed while taking cognizance to decide during trial. It is when aggrieved by the same, accused moved the High Court for the proceedings taken cognizance sought to be quashed on the grounds of want of sanction, those proceedings were quashed from which the appeals arisen before the Apex Court.

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[4] AIR 2015 SCW 3282

31. The Apex Court in the factual scenario therein observed that one of the earlier expression, in **Shambhoo Nath Misra Vs. State of U.P. and Others[5]** Para 5 speaks that, it is not the official duty of the public servant to fabricate the false record and misappropriate the public funds in furtherance or in discharge of official duties to say it is integrally connected or inseparably interlinked of the duties to the crime committed to say sanction is mandatory and the other expression referred of **Parkash Singh Badal Vs. State of Punjab and Others[6]** particularly at Para 38 that the question may arise at the stage of the proceeding whether sanction is necessary or not that may have to be determined from stage to stage and in such cases not necessarily to be considered as soon as the complaint is lodged from the allegations contained therein. The other decision referred is **Rajib Ranjan and Others Vs. R.Vijaykumar[7]** at Para 18 that while discharging his official duties, if a public servant even enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanor on his part is not to be treated as an act in discharge of his official duty and therefore provisions of Section 197 Cr.P.C. will not be attracted. Also referred another expression in **Subramanian Swamy Vs. Manmohan Singh and Another[8]** Para 74 that protection is against malicious prosecution which was extended in public interest however cannot become a shield to protect corrupt officials. Therefrom observed ultimately in **Battenapatla Venkata Ratnam supra** at last Paras that alleged indulgence of the officers in cheating,

[5] (1997) 5 SCC 326
[6] (2007) 1 SCC 1
[7] (2015) 1 SCC 513
[8] (2012) 3 SCC 64

fabrication of records or misappropriation if any cannot be said to be in discharge of their official duty even to permit evasion of payment of duty and cause loss to the revenue and the view accordingly taken by the Magistrate to consider the requirement of sanction or not during trial in correct and High Court committed an error in reversing the same. Here this decision but for to consider the principle, the facts have no application, apart from the settled law that there are no precedents on facts also for no two cases facts are exactly same or similar, but for with variation which may tilt the result from independent application with reference to circumstances; more particularly for the reason that the learned Magistrate did not even so observed in the impugned order taking cognizance.

32) In fact this expression is one of the several expressions taken consideration on the scope of Section 197 Cr.P.C. of the sanction required or not in S.Balakrishna supra that was placed reliance of the requirement of sanction as one of the expressions by the learned counsel for the accused/revision petitioners apart from several other expressions.

33) Of which, in **Rakesh Kumar Mishra Vs. State of Bihar**[9] the Apex Court held at Para 6 that protection given under Section 197 Cr.P.C. is to protect responsible public servants against institution of possibly vexatious criminal proceedings for the offences alleged to have been committed by them while they are acting or purportedly to act as public servant and the policy of legislature is to afford adequate protection to public servants and

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[9] (2006) 1 SCC 557

ensure that they are not prosecuted for anything done by them in discharge of official duties without reasonable cause. Before Section 197 Cr.P.C. can be shown invoked it shall be shown that accused of offences alleged to have been committed by him while acting or purporting to act in discharge of official duties. No doubt it is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The protection is available if the act must fall within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant.

34) Further, in **Sankaran Moitra Vs. Sadhana Das**[10] relying on the earlier expression in **N.K. Ganguly Vs. CBI, New Delhi**[11], it was held that one of the protections under Section 197 Cr.P.C. to the public servant is against possible vexatious criminal proceedings for the offences alleged to have committed by them and the policy of legislation is to afford adequate

[10] 2006 (2) ALT (Crl.) 224 (SC)
[11] 2015 12 Scale 500

protection to them to ensure that they are not prosecuted for anything done by them in discharge of their official duties without reasonable cause.

35) In fact the 3 Judge Bench expression of the Apex Court way back in 2001, reported in **P.K. Pradhan Vs. State of Sikkim rep. by the CBI**[12] held by scanning the law right from 1939 Federal Court and 1948 Privy Counsel and by those quoted with approval, particularly in **Sreekantiah Ramayya Munipalli Vs. State of Bombay**[13] that was relied saying, Section 197 Cr.P.C. should not be construed in such a narrow way the same can never be applied if, for of course it is no part of a official 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 the official duty as well as in dereliction of it. The Section has content and its language must be given the meaning. Same also quoted with approval in **Amrik Singh Vs. State of Pepsu**[14] that if the discharge of official duty and the act of accused complained of are inseparable, sanction is a must.

36) By quoting of the same the Constitution Bench in **Matajog Dobey Vs. H.C. Bhari**[15], clearly laid down that, the power conferred or a duty imposed by statute or otherwise where there is nothing said expressly inhibiting the exercise of power or performance of duty of any restriction or limitation, it is

[12] AIR 2001 SC 2547
[13] AIR 1955 SC 287
[14] AIR 1955 SC 309
[15] AIR 1956 SC 44

reasonable to hold that it carries with the power of doing all such acts with all such means necessary.

37) From this it is clear that the power to upgrade licence includes the power to solicit or call for information if necessary again and again till fully furnished and doubts or qurreis clarified and even it results delay, it cannot be said same is outside the purview of official discharge of duties.

38) In the above expression, it was held on facts of the allegation against the official was that pursuant to the warrant having been authorized, forcibly broke open entrance door and for resistance not to allow entry, tied a person affording resistance with rope and assaulted therefrom injuries caused and on criminal complaint filed against the official, the Apex Court held that the complaint cannot be entertained without requirement of sanction from the competent authority under Section 197 Cr.P.C. as integral part of discharge of official duty even exceeding the limitation.

39) Once such is the case, none of the acts of the accused persons herein constitute anything outside the purview of the official discharge of the duties, from any delay in granting composite broker license by up-gradation in favour of the entity or for any quiries raised to comply with any objections with correspondence or in deviation to the statutory provision of time limit or for any derivation of notice and requirement of information after its receipt as all are integral part of the discharge of the official duties and thereby sanction is a must.

40) Said expression of the Constitution Bench of Matajog supra still rules the field and quoted with approval in several expressions. The expression in Battenapalli (supra) and the decisions referred therein mostly relate to misappropriation of funds and manipulation of records to have wrongful gain by cheating by public servant with dishonest intention and the like and no way apply to the case on hand. In fact all most all these expressions among other were referred in S.Balakrishna supra in saying sanction is mandatory even anything shown in discharge of the official duty, even the official acted in excess of the duty or performance of the act.

41) From reading of the expressions supra, the principle laid down is very clear that once there is a reasonable connection between the act complained of offence and performance of duty for the excess will not be sufficient ground to deprive the protection as per the settled expressions and thereby any cognizance taken for want of sanction is incompetent and that error was so fundamental that invalidates the proceedings even pursuant to which any trial conducted and any conviction passed even any appeal filed even at that stage raised to relegate the parties to the apposition or stage of pre-cognizance in holding cognizance taken by the Magistrate is per se unsustainable for no factual foundation even to defer with police final report in quashing the proceedings ultimately.

42) For that the expressions placed reliance are **State of Karnataka Vs. C. Nagarajaswamy**[16] and **State of Goa Vs. Babu**

[16] 2006 (1) ALT (Crl.) 119 (SC)

Thomas[17] wherein the Apex Court held that for want of sanction, taking cognizance by the Court is incompetent and the error was so fundamental that invalidates the proceedings.

43) In **D.T. Virupakshappa Vs. C. Subash**[18]**,** it was held that the the provision is meant to protect the public servant against institution of possible vexatious proceedings for the offences alleged while they are acted or purported to act as public servant and even any official duty in excess of duty complaining as offence from the reasonable conclusion between act and duty that excess will not be sufficient ground to deprive protection and even in such case sanction is mandatory without which the proceedings taken cognizance are incompetent.

44) Same is also the law laid down in **Kumar Raghavendra Singh Vs. Ganesh Chandra Jew**[19] and **Anjani Kumar Vs. State of Bihar**[20] that Court has to consider whether a complaint filed against the public servant is a counter blast to the action taken by him and when the acts shall complained is after with thought of deliberation to rope the officials continuation of proceedings abuse of process and those are liable to be quashed is the conclusion arrived by the Apex Court referring to several expressions.

45) Thus in the case on hand, from the facts of the case, sanction is a must and the cognizance taken by the learned Magistrate is incompetent and that error is so fundamental that

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[17] 2005 (8) SCC 130
[18] 2015 (3) ALT (Crl.) 143 (SC)
[19] (2004) 8 SCC 40
[20] (2008) 5 SCC 248

invalidates the proceedings to issue summons and to proceed further.

46) Coming to the other contention raised by the learned counsel for the 2nd respondent to the revision petition that the scope of revision is different from scope of power under Section 482 Cr.P.C. In fact in answering to it the counsel for the revision petitioners referred **Dhariwal Tobacco Products Limited and Others Vs. State of Maharastra**[21] that even the Court in exercise of revision powers where it is outside the scope of revision of the lis, inherent power under Section 482 Cr.P.C. since available to the High Court from its very constitution saved by Section 482 Cr.P.C. that is available to exercise for the ultimate aim is to sub serve the ends of justice. Further the power under Article 227 of the Constitution is also available in deciding the revision, leave about the other powers under Section 483 Cr.P.C, apart from the High Court as per Sections 397 to 402 Cr.P.C can hear the revision, if necessary with powers of appeal by such conversion.

47) In fact those aspects no way require herein for consideration, as this Court is competent to decide within the scope of revision under Section 397 Cr.P.C on the legality, propriety and correctness of the impugned orders. Once it is shown the impugned order is neither legal nor correct but for outcome of any impropriety, it is prone to revision jurisdiction to set aside, leave about other powers available under Sections 482 or 483 Cr.P.C or under Article 227 of the Constitution of India and same is also held by this Court by elaborate discussion on

[21] AIR 2009 SC 1032 (1)

the High Courts' powers in deciding a revision in **Sun Pharmaceuticals Limited vs State of Telangana**[22]

48) The other contention raised by the learned counsel for the 2nd respondent to the revisions is that the POA Act is a special Act and the provisions of Section 197 Cr.P.C. has no application to the facts on hand. This contention has no legs to stand from reading of Section 4(2) of the Act read with 5 of Cr.P.C. In fact the same came for consideration before this Court in relation to the Act and a Division Bench of this Court in **Referring Officer rep. by State of A.P. Vs. Shekar Nair**[23] answered the same in the area where there is no specific provision with non-absentee clause under the special Act to over write the Cr.P.C. provisions or where the special Act is silent the general law of Cr.P.C. is applicable and it is in relation to answer the requirement of committal proceedings even to the offence under the Act. In fact the Apex Court quoted with approval of the same referring to Sections 4(2) & 5 and 193 Cr.P.C. and also Sections 2, 3 and 4 of the Act in **Gangula Ashok and Another Vs. State of A.P.**[24] saying in the absence of any contrary provision in the special Act the provision of Cr.P.C. will apply.

49) Having regard to the above, for no provision, like in Section 18 of the Act of legal bar to grant anticipatory bail for the offences under the Act, irrespective of the same provided in Cr.P.C., in relation to the requirement or not of any sanction of Section 197 Cr.P.C., when Section 197 Cr.P.C requirement cannot be exempted even for an offence under the Act; thus once

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[22] 2016 (3) ALT (crl) at para Nos.30 to 30 XXIII
[23] (1999) 3 AnLT 533
[24] (2000) 2 SCC 504

there is no dispute that all the accused persons are public servants within the meaning of Section 21 of IRDA Act 1999 and they got protection for the acts done under good faith in discharge of their duties under the provisions of the Acts, Rules and Regulations or Circulars etc., as per Section 22 of the Act and even it is shown that in discharge of their official duties in relation to any delay caused by their correspondence by raising queries to furnish information and anything covered even in the information available with IRDA and any notice given below the statutory prescribed time or from any office note the Chairman taken an action and on appeal it is set aside, none of the acts including as to any part of the information furnished from the application, for its consideration in the public dominion and same tracked even any of the income tax officials in retrieving the information and its in making use for their lawful of their duties and from it any loss caused to the entity of the complainant, none constitute any offence, apart from even taken to constitute any offence, no way attracts Section 3(i)(ix) of the Act from the facts referred supra and none are outside the purview of the official discharge of the duties of the public servants nor become any way unconnected with their duties and thereby also sanction is required to prosecute them and any cognizance taken without sanction is unsustainable; for all these reasons and the referred report though not stated in so many words, and there are even some facts outcome of any mistake in appreciation, conclusion when sustainable and to defer with on protest petition to take cognizance there is no basis for the learned Magistrate to pass the impugned order and thereby, the impugned order is liable to be set aside for all these reasons, by this Court while sitting in revisions.

50) Accordingly and in the result, the criminal revision cases are allowed and the cognizance taken by the learned Magistrate is set aside.

51) Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:27.01.2017
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