THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.346 OF 2015

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in C.C.No.26 of 2014 in R.C.No.19(A)/2011 dated 21.11.2014 on the file of the Principal Special Judge for C.B.I Cases, Hyderabad.

The respondent herein/complainant filed charge sheet against the petitioner herein who is arrayed as Accused No.3 in the charge sheet, for the offences punishable under Sections 120-B, 420, 409, 468, 471, 477-A IPC and under Sections 9, 11, 12, 13(2) r/w 13(1)(c) & (d) of Prevention of Corruption Act, 1988 (for short 'P.C. Act').

The specific allegations made against this petitioner in the charge sheet are extracted herein for better appreciation of the case.

> "3. **Sri S.N. Mohanty, IAS (A-3) former Vice Chairman & Housing Commissioner, APHB** :
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> (i) Sri S.N. Mohanty, IAS (A-3) knowing fully well that M/s. Indu Projects Ltd. (A-5), did not have the requisite financial strength willfully omitted to prescribe any criteria for the Lead Consortium Member (LCM) at the RFP stage, in spite of the fact that the LCM has been entrusted with the primary responsibility of execution of Kukatpally and Gachibowli housing projects worth Rs.393.68 Crore and Rs.25.42 Crore;
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> (ii) Sri S. N. Mohanty, IAS (A-3) had willfully facilitated M/s. Indu Projects Ltd., (A-5) to become the lead partner with 51% in Embassy-Unity consortium at RFP stage in violation of the condition in the letter dated 05.07.2004 to preserve the consortium structure;

(iii) Sri S.N. Mohanty, IAS (A-3) has willfully omitted to obtain approval/ratification of the HPC for the changes in the consortium structure;

(iv) Sri S.N. Mohanty, IAS (A-3) has wilfully facilitated payment of development fee in five instalments against the HPC approval for upfront payment for Kukatpally and Gachibowli terming them as 'very attractive' sites;

(v) Sri S.N. Mohanty, IAS (A-3) has wilfully omitted to obtain the specific approval of the HPC for the changes in the payment structure;

(vi) Sri S.N. Mohanty (A-3) has wilfully omitted to act when Sri I. Syam Prasad Reddy (A-4) of M/s. Indu Projects Ltd. (A-5) has requested for changes in the consortium structure immediately after the letter of award and has wilfully omitted to ensure that the structure of SPVs viz., M/s. CHIDCO Pvt. Ltd., and M/s. Vasantha Projects Pvt. Ltd. were in tune with the RFP/bid allotment conditions;

(vii) Sri S. N. Mohanty, IAS (A-3) has wilfully facilitated Sri I. Syam Prasad Reddy (A-4) and M/s. Indu Project Ltd. (A-5) which did not fulfil the eligibility criteria to get the housing projects worth Rs.393.68 Crores and Rs.25.42 crores at Kukatpally and Gachibowli with 51% stake, under the garb of Embassy-Unity consortium.

(viii) Sri S.N. Mohanty, IAS (A-3) by abusing his official position has approved exeution of Powers of Attorney in favour of M/s. CHIDCO Pvt. Ltd., and M/s. Vasantha Projects Pvt. Ltd., before conditions precedent are fulfilled and in violation of the conditions of allotment and Clause 9.6 of the development agreement and thereby empowered the developer private companies to negotiate, to receive sale proceeds from the prospective customers;

(ix) Sri S.N. Mohanty, IAS (A-3) has willfully omitted to initiate action against the defaulting companies M/s. CHIDCO Pvt. Ltd., and M/s. Vasantha Projects Pvt. Ltd. when they have made changes in the SPV structure, knowing fully well that such changes are in gross violation of the conditions in RFP/letter of award and development agreement and more importantly in violation of the specific directions of Secretary, Housing Department in the meeting held on 21.11.2005 and DO letter dated 19.12.2005 and thereby dishonestly disposed of housing projects at Kukatpally and Gachibowli attracting the offence of criminal breach of trust;

(x) Sri S.N. Mohanty, IAS (A-3) dishonestly and fraudulently and by abusing his official position has facilitated awarding of housing projects at Bandlaguda and Moolasagaram-Nandyala worth Rs.434.86 Crore and Rs.117.83 Crore respectively to ineligible companies;

(xi) Sri S.N. Mohanty, IAS (A-3) acting in conspiracy with the others has obtained the approval of HPC to award Moolasagaram-Nandyala housing project under deception;

(xii) Sri S.N. Mohanty, IAS (A-3) acting in furtherance of criminal conspiracy with others had approved signing of development agreement with M/s. Indu Projects Ltd., knowing fully well that it was not the SPV formed as contemplated in the bid documents and thereby dishonestly and fraudulently disposed of the housing project at Bandlaguda worth Rs.434.86 Crore in violation of the conditions of RFP/letter of award.

(xiii) Sri S.N. Mohanty, IAS (A-3) has willfully omitted to review and approve the DPRs submitted by the developer companies thereby indirectly placed discretionary powers unto the developers in deciding the type of structures, designs and alike that is not contemplated in the agreement and facilitate the private companies to construct more area in highend villas and neglect construction of LIG units thereby worked against the objectives of APHB for providing affordable housing to all sections of people;

(xiv) Sri S.N. Mohanty, IAS (A-3) acting in furtherance of criminal conspiracy with other accused persons has wilfully omitted to make RFP, the bedrock for nomination and selection of the prospective developers, as as part and parcel of development agreements nor the same was referred in any provision of the agreement and thereby dishonestly and fraudulently facilitated the unscrupulous private developers to flout the conditions of allotment at their will get away unscathed from the deviations on many occasions;

(xv) By the above said overt acts of willful omissions and commissions, Sri S.N. Mohanty has committed the offences of criminal conspiracy; cheating; criminal breach of trust by public servant i.e. u/s 120-B r/w 420, 409 and 13 (2) r/w 13 (1) (d) & (c) PC Act, 1988."

Thus, from the allegations made in the charge sheet, the petitioner as the Chairman & Housing Commissioner, Andhra Pradesh Housing Board, Hyderabad, allegedly committed several irregularities which amounts to offences punishable under

Sections 120-B, 420, 409, 468, 471, 477-A IPC and under Sections 13(2) r/w 13(1)(c) & (d) of the P.C Act.

It is the contention of the petitioner that the allegations made against him which are extracted above are purely connected to his duties, otherwise, he has no connection with the alleged acts done by the petitioner and no sanction was obtained to prosecute the petitioner as required under Section 197 Cr.P.C, so also under Section 19(1) of the Act to proceed against this petitioner for the offences stated supra.

More curiously, in paragraphs 98 & 99 of the charge sheet, it is alleged that the offences under Sections 9 & 12 of the Act do not require sanction for prosecution for the purpose of taking cognizance of the offences and no sanction for prosecution is required for the offences allegedly committed by the petitioner under Sections 120-B, 420, 409, 468, 471, 477-A IPC for the purpose of taking cognizance of those offences by the Court against this petitioner. It is also alleged that sanction for prosecution under Section 19(1) of the Act for commission of offences under Sections 13(2) r/w 13(1)(c) & (d) of the P.C. Act is awaited from the competent authority in respect of the petitioner/A-3 and requested the Principal Special Judge for C.B.I Cases, Hyderabad, to file additional statements as additional documents, as and when required and requested the Court below to take the charge sheet on file, try and dispose of the case in accordance with law.

The fact mentioned in the charge sheet in paragraphs 98 & 99 itself disclosed that the respondent herein is conscious about requirement of sanction to prosecute this petitioner for the offences under Sections 13(2) r/w 13(1)(c) & (d) of the P.C. Act. But, as no sanction was obtained from the competent authority, a request was made for sanction to the government. Therefore, taking cognizance by the Principal Special Judge for C.B.I Cases, Hyderabad, against the petitioner herein/A-3 for the offences punishable under Sections 120-B, 420, 409 IPC and under Sections 13(2) r/w 13(1)(c) & (d) of the P.C. Act, is illegal and contrary to the mandatory requirement under Section 197 Cr.P.C and Section 19(2) of the Act, thereby, prosecuting the petitioner for various offences mentioned supra without prior sanction, as required under law is illegal.

Though, the learned counsel for the petitioner raised several contentions during course of hearing, he limited his argument only as to taking cognizance for the offence without sanction. Therefore, ground no.2 of the grounds mentioned in the petition is relevant.

The contention raised in this petition is with regard to legality of the taking cognizance of offences against the accused for the offences referred supra without obtaining sanction. But, the petitioner contended that while he was functioning as the Chairman & Housing Commissioner, Andhra Pradesh Housing Board, Hyderabad, the petitioner was of the rank of the Principal Secretary in the Government of Andhra Pradesh, as he ceased to be discharging his duties as the Chairman & Housing Commissioner, Andhra Pradesh Housing Board, Hyderabad, with effect from 12.04.2007 and he became an employee of the Central Government and has been working under the cadre of Joint Secretary, posted as Advisor Planning Commission of India on

08.03.2011 and then promoted in the cadre of Joint Secretary as Senior Advisor, Planning Commission of India and subsequently, promoted as Additional Secretary and posted as CEO, Food Safety & Standards Authority of India, DG (Supplies & Disposals) on 08.05.2011 and then promoted in the cadre of Secretary and posted as Secretary, National Disaster Management Authority on 28.02.2014 and presently posted as Secretary, Higher Education, Ministry of Human Resources Development, Government of India, New Delhi and as such, C.B.I has no power or jurisdiction to conduct enquiry or investigation against the petitioner herein, in view of the prohibition contained in Section 6-A(1)(a) of the Delhi Special Police Establishment Act, 1946, which reads as follows:

> "6-A. Approval of Central Government to conduct inquiry or investigation:-
>
> (1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to:
>
> (a) The employees of the Central Government of the level of Joint Secretary and above."

This provision was however declared as void being discriminatory by the Supreme Court in **Subrahmanya Swamy v. Director, CBI**[1], as F.I.R. in the said case was registered on 17.08.2011 and investigation was commenced, which is in the teeth of Section 6-A(1)(a), cannot attain validity to enable the filing of the charge sheet dated 09.09.2014.

It is urged in the grounds of petition that, as there was no previous sanction under Section 19(1) of the Act, for investigation,

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[1] 2014 (8) SCC 682

the entire investigation and subsequent action, is wholly illegal and without jurisdiction. Further, when the charge sheet itself stated that sanction for prosecution under Section 19(1) of the Act to take cognizance of the offences punishable under Sections 13(2) r/w 13(1)(c) & (d) of the Act, is awaited from the competent authority in respect of the petitioner herein, the Court below has no power or jurisdiction to take cognizance of the case against the petitioner/A-3 for the said offences, as much as, the allegations in the charge sheet against the petitioner are directly connected with discharge of his official functions or duties, but not otherwise, as sanction from the government under Section 197(1) Cr.P.C was not obtained and therefore, taking cognizance of the alleged offences against the petitioner is illegal and arbitrary. It is urged in the petition that the Court below did not examine the requirement of sanction under Section 197(1) Cr.P.C and Section 19(1) of the P.C Act and took cognizance of the offence against the petitioner for the offences Sections 120-B, 420, 409 IPC and under Sections 13(2) r/w 13(1)(c) & (d) of the P.C. Act. Therefore, requested this Court to quash the proceedings in C.C.No.26 of 2014 in R.C.No.19(A)/2011 dated 21.11.2014 on the file of the Principal Special Judge for C.B.I Cases, Hyderabad, against this petitioner, so far as the proceedings relating to this petitioner.

The respondent raised several contentions with regard to role of the petitioner/A-3. But, those contentions needs no further consideration, as the learned counsel for the petitioner limited his argument before this Court only about sanction as required under Section 197(1) Cr.P.C or Section 19(1) of P.C. Act.

The respondent filed counter before the Court below running into 34 pages. But, except the contention with reference to sanction required under Section 197(1) Cr.P.C or Section 19(1) of the P.C Act, no other contentions need be considered in this present order. In paragraph 10 at page 4 of the counter, the respondent raised specific contention that the peititoner/A-3 knowing fully well that M/s. Indu Projects Ltd.(A-5) did not have the requisite financial strength wilfully omitted to prescribe any criteria for the Lead Consortium Member (LCM) at the RFP stage, inspite of the fact that the LCM has been entrusted with the primary responsibility of execution of Kukatpally and Gachibowli housing projects worth Rs.393.68 crores and Rs.25.42 crores.

The petitioner herein was the Chairman & Housing Commissioner, Andhra Pradesh Housing Board, Hyderabad during the relevant period and he only represented APHB in all the High Powered Committee (HPC) meetings relevant for the facts in issue. As the Chief Executive Officer of APHB at the relevant period, the petitioner only monitored, supervised and took all important decisions with regard to issue of notifications, bidding process and signing of development agreements/Powers of Attorney on behalf of APHB during the relevant period and he has not delegated his discretionary powers to anybody else. Further, the evidence, documentary and oral, collected during the course of investigation is voluminous in nature and not restricted to a few quotes referred to, by the petitioner/A-3 in this petition.

It is submitted in the counter that M/s Indu Projects Ltd/ (A-5) the Lead Consortium Member, which was entrusted with the prime responsibility of execution of housing projects worth Rs.393.68 Crore and Rs.25.l42 Crore at Kukatpally and Gachibowli, was not prescribed any criteria, either financial or technical. However, he tried to disassociate himself from the apparent omission on flimsy and unjustifiable grounds. Further, the petitioner drafted, corrected and issued the Notification in Newspapers and therefore, the petitioner therefore cannot deny his knowledge of the eligibility criteria prescribed for housing projects at Hyderabad and Visakhapatnam included that the developer firms/consortia must have at least:

(i) A turnover of Rs.100 Crores per year during the last five years;

(ii) A minimum networth of Rs.100 Crores;

(iii) The developer company/consortium or its associate, having experience in such schemes as envisaged by APHB;

(iv) The developer company/consortium shall possess an impeccable track record and proven capabilities in handling mega-ventures like township development with stringent time frames

It is stated in the counter that the petitioner received the EOIs from different bidders and were entrusted to M/s. CRISIL Ltd., for analysis and he personally supervised the entire process and the EOI submitted by Embassy-Unity Consortium (in which Indu Projects Ltd. was a member) contain their financial and technical qualification which reads Sheet Nos. 1, 113, 114 of Doc. No. 17/2)

Calculation of Annual Turnover :
Rs. In Crore

Year	Consortium Partners	Turnover	Total Turnover
2002-03	Embassy Group	62.24	485.03
	Unity Infraprojects Ltd.	149.18	
	Soma Enterprise Ltd.	256.99	
	Indu Projects Ltd.	16.62	
2001-02	Embassy Group	60.15	338.66
	Unity Infraprojects Ltd.	97.14	
	Soma Enterprise Ltd.	180.02	
	Indu Projects Ltd.	1.35	
2000-01	Embassy Group	35.71	339.49
	Unity Infraprojects Ltd.	86.45	
	Soma Enterprise Ltd.	217.33	
1999-2000	Embassy Group	24.21	260.00
	Unity Infraprojects Ltd.	60.02	
	Soma Enterprise Ltd.	175.77	
1998-99	Embassy Group	14.79	153.90
	Unity Infraprojects Ltd.	52.85	
	Soma Enterprise Ltd.	86.26	

Calculation of Net worth :
Rs. In Crore

S.No.	Consortium Partner	Net worth
1	Embassy Group	21.20
2	Unity Infraprojects Ltd.	28.87
3	Soma Enterprise Ltd.	49.55
4	Indu Projects Ltd.	6.62
	Total	**106.24**

It cannot be disputed that but for inclusion of M/s. Soma Enterprises Ltd., and M/s. Unity Infraprojects Ltd., Embassy-Unity consortium did not fulfill the criteria. M/s. Embassy Realtors Pvt. Ltd., (A-12) the lead consortium member at EOI stage was incorporated in the year 2000 did not have any business; any income or any assets till the year 2004.

These facts clearly establish that the lead member M/s. Embassy Realtors Pvt. Ltd. and the authorized signatory Sri I. Syam Prasad Reddy (A-4) of M/s. Indu Projects Ltd. (A-5) respectively have the least financial strength among all the consortium members.

M/s. Soma Enterprises Ltd., who was the major contributor for the financial criteria of net worth and turnover did not have the experience in the related field of housing. On 10.06.2014, the petitioner was present in the HPC meeting which approved short listing of bidders on the basis of EOIs submitted by them and analyzed with the assistance of M/s. CRISIL [Sheet Nos. 137 to 148 of F.No.101/K1/PC/2004, Volume-I – Doc. No. 13/21] and that the petitioner herein engaged the services of M/s. CRISIL Ltd., for preparation of Request for Proposal (RFP – Tender document) and personally monitored the process.

In this context, it is relevant to advert to specific allegations referred by the respondent in the counter affidavit, which reads as under:

> "That as per the oral evidence of LW-6 Sri D.S.Raju, Project Co-ordinator of APHB supported by the documentary evidence revealed that :
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> "Discussions were held between Sri S.N. Mohanty, VC and Sri S.R. Ramanujam of M/s. CRISIL on preparation of RFP documents including finalization of technical evaluation criteria, minimum equity contribution of the technical/financial member, lock in period for the lead and technical consortium members. It was decided that the technical member should fulfill the prescribed criteria i.e. they should have completed a housing project of 1.0 million sq.ft. and developed a minimum area of 20 Acres. However, I agree that we have not fixed any criteria for the lead consortium member or their financial capability, although it was earlier decided on 21.05.2004 to evaluate both financial and technical capability. Consortia are required to nominate the technical and lead members".
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> That the omission is only on account of the fact after opening of EOI, Sri S.N. Mohanty was fully aware of the fact M/s. Indu Projects Ltd., a newly incorporated company with negligible financial strength and expertise in housing project does not meet/fulfil even the minimum criteria, if prescribed and Sri S.N. Mohanty who was acting in connivance with other accused intentionally omitted to insist for fixation of any sort of criteria for the Lead Consortium Member i.e., M/s. Indu Projects Ltd.
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> That this proves that the contention that the documents at sheet No. 154 to 159 do not indicate that the petitioner knew fully well that M/s. Indu Projects did not have the requisite financial strength.

2. *Sri S. N. Mohanty, IAS (A-3) had willfully facilitated M/s. Indu Projects Ltd., (A-5) to become the lead partner with 51% in Embassy-Unity consortium at RFP stage in violation of the condition in the letter dated 05.07.2004 to preserve the consortium structure*;

3. Sri S.N. Mohanty, IAS (A-3) has willfully omitted to obtain approval for ratification of the HPC for the changes in the consortium structure

With regard to the averment mentioned at para 17 of the petition under analysis it is submitted that while forwarding the RFPs to different shortlisted companies/consortia APHB has clearly stated that their selection is based upon the EOI documents and other information submitted by them and therefore the consortium structure has to be preserved [Sheet Nos. 177 & 178 of Doc. No. 13/21)]

That there is evidence in the form of document that the structure of Embassy-Unity consortium was substantially altered/modified in the RFP – Tender documents submitted by them and were considered and analyzed by the petitioner with the assistance of M/s. CRISIL Ltd., and placed before the HPC which accorded their approval in their meeting held on 01.11.2014 [Sheet Nos. 2, 9 etc, of Doc. No. 17/3; Sheet Nos. 3, 8 of Doc. No. 17/4)]

% of share among consortium members :

S.No.	Consortium Member	EOI [Original submissions]	EOI [Submissions dt. 29.03.2004]	RFP
1	M/s. Embassy Realtors Pvt. Ltd.	30	25	20
2	M/s. Unity Infraprojects Ltd.	25	20	1
3	M/s. Soma Enterprise Ltd.	25	20	14
4	M/s. Indu Projects Ltd.	20	20	51
5	Sri Avinash Bhosale	--	15	14

<u>Effects of these discrepancies</u> :

That these discrepancies have completely altered the structure of the Embassy-Unity Consortium in violation of condition in APHB's letter dated 05.07.2004 forwarding RFP documents. M/s. Soma Enterprise Ltd., and M/s. Unity Infraprojects Ltd., on whose financial strengths, the Embassy-Unity Consortium has been shortlisted in the EOI stage, were reduced to minority stakeholders in the SPV with 14% and 1% respectively. Conversely, M/s. Indu Projects Ltd., (A-5) and M/s. Embassy Realtors Pvt. Ltd., who had negligible financial strength have become the lead and technical members with 71% of the equity in the SPVs, between themselves.

That as per the financial reports of M/s. Embassy Realtors Pvt. Ltd., (A-12) submitted on 24.03.2004, the company has not done any business till the year 2003-04. This fact has also been admitted by Sri Jitendra Virwani (A-11) during his examination.

That there is no a disput that in infrastructure projects, the objective/purpose of prescribing certain minimum qualifying criteria is to ensure that the projects are awarded to only the companies/consortium that have the financial capability and relevant past experience in having executed similar projects.

Further the petitioner being at the helm of affairs of APHB and the authority who had supervised the entire process of bidding (EOI/RFP) cannot plead ignorance on these glaring and well documented discrepancies.

Further as per the evidence of LW-14 Sri T.K.Dewan, former Chief Secretary and Chairman of HPC who approved APHB proposals for short listing the bidders on 10.06.2014 has categorically stated that

"There was a deviation in the structure of the consortium as approved by the HPC, by APHB and CRISIL at a later stage. The APHB should have brought any such specific changes/ modification/amendment, if required, to the notice of the HPC for their reconsideration and approval".

That the agenda for HPC committee would be drawn up by APHB in consultation with Housing Department.

Further as per LW-13 Sri S.P.Rao, IAS, stated that in the HPC meeting held on 10.06.2004 and 01.11.2004 he was unable to exactly recall the reason as to why collection of upfront payment/ development fee was made into five instalments. On perusal of the document dated 05.07.2004 which is a letter written by VC and Housing Commissioner APHB, written to Embassy Unity Consortium as member of HPC he stated that he was not aware of such a document nor is it comes under his jurisdiction to oversee such communication.

Further Concession Agreements dated 10.03.2004 has not been put up in the HPC meeting attended by him (part of EOI showing the structure of Embassy-Unity consortium).MOU dated 11.09.2004; 29.09.2004 (part of Tender documents with changed structure of Embassy Unity Consortium) have not been put up in the HPC meeting attended by him.

That the above facts clearly indicate that the petitioner did not seek or not obtain approval of the HPC at any point of time including the subsequent HPC meeting on 01.11.2004.(Sheet No.24 to 29 in Doc. No.13/22).

4. Sri S.N. Mohanty, IAS (A-3) has wilfully facilitated payment of development fee in five instalments against the HPC approval for upfront payment for Kukatpally and Gachibowli terming them as 'very attractive' sites;

5. Sri S.N. Mohanty, IAS (A-3) has wilfully omitted to obtain the specific approval of the HPC for the changes in the payment structure;

With regard to the averment mentioned at para 17 of the petition under analysis it is submitted that the HPC in their meeting held on 10.06.2004, approved the proposals for payment of development fee upfront for sites at Kukatpally and Gachibowli, terming them as very attractive sites [Sheet No. 147 of Doc. No.13/21]

Further as per the LW-6, Sri D.S. Raju, Project Coordinator, APHB stated that during the course of discussions between Sri S.N. Mohanty, VC & HC, APHB with Sri S.R. Ramanujam of M/s. CRISIL Ltd. it was decided that the development fee can be made in five equal installments of 20% each and was accordingly included in the RFP.

Further as per LW-14 Sri T.K. Dewan, IAS (Rtd.) was categorical in his statement that the HPC under his chairmanship on 10.06.2004 has approved the proposals for 'upfront' payment of development fee for Kukatpally and Gachibowli sites. If any changes are required to be made regarding the mode of payment, specific approval of the HPC is needed.

6. Sri S.N. Mohanty (A-3) has wilfully omitted to act when Sri I. Syam Prasad Reddy (A-4) of M/s. Indu Projects Ltd. (A-5) has requested for changes in the consortium structure immediately after the letter of award and has wilfully omitted to ensure that the structure of SPVs viz., M/s. CHIDCO Pvt. Ltd., and M/s. Vasantha Projects Pvt. Ltd. were in tune with the RFP/bid allotment conditions;

7. Sri S. N. Mohanty, IAS (A-3) has wilfully facilitated Sri I. Syam Prasad Reddy (A-4) and M/s. Indu Project Ltd. (A-5) which did not fulfil the eligibility criteria to get the housing projects worth Rs.393.68 Crores and Rs.25.42 crores at Kukatpally and Gachibowli with 51% stake, under the garb of Embassy-Unity consortium.

With regard to the averment mentioned at para 17 of the petition under analysis it is submitted that on 19.11.2004, Letters of Award (LOA) were issued to M/s. Indu Projects Ltd., for Ac.4.29 at Gachibowli and Ac.50.00 at Kukatpally. The letters have clearly stated that Embassy-Unity Consortium led by M/s. Indu Projects Ltd., and comprising (i) M/s. Indu Projects Ltd., (ii) M/s. Embassy Realtors Pvt. Ltd., (iii) M/s. Unity Infraprojects Ltd., (iv) M/s. Soma Enterprise Ltd. and (v) Mr. Avinash N. Bhosale have been designated as the successful bidder to develop the housing projects and the award was subject to the terms and conditions in the RFP documents and Principles of Agreement to which Embassy-Unity Consortium has given their acceptance. [Sheet No. 59 to 64 and 96 to 101 of Doc. No. 13/22 - Vol. I]

Further on 22.01.2005, Sri I. Syam Prasad Reddy (A-4) has addressed a letter to APHB informing that the Embassy-Unity consortium has formed an SPV in the name and style of M/s. Cyberabad Hitech Integrated Township Development Corporation Pvt. Ltd., (M/s. CHIDCO Pvt. Ltd.) (A-8) for implementing the housing project on Ac.50.00 at Kukatpally. In the letter he sought approval for restructuring of the equity holding with (i) M/s. Indu Projects Ltd.-51.25%; (ii) M/s. Embassy Realtors Pvt. Ltd.-34.75% and (iii) Mr. Avinash N. Bhosale-14.00% thereby exiting M/s. Soma Enterprises Ltd., and M/s. Unity Infra Projects Ltd., from the consortium.

That the said letter was received by Sri S.N. Mohanty (A-3), VC & HC and marked to the Project Coordinator [Sheet No. 265 & 266 of Doc. No. 13/22 - Vol.II]."

All the contentions raised in the counter before the Court below, at best, would show that the peititoner/A-3, being Chairman & Housing Commissioner, Andhra Pradesh Housing Board, Hyderabad, did not take necessary care and caution while entrusting the housing project and other related works to various agencies like M/s. Indu Projects Ltd.(A-5), M/s. Embassy Realtors Pvt. Ltd., (A-12), etc. Therefore, the petitioner and other accused joined hands with one another and the petitioner did not exercise due diligence in discharge of his duties, being Chairman & Housing Commissioner, Andhra Pradesh Housing Board, Hyderabad and the acts done by the petitioner caused serious loss to the government exchequer. Therefore, prior sanction is not required to proceed against the petitioner for his wilful omissions and commissions complained against this petitioner. When there is a strong *prima facie* material against this petitioner, the proceedings cannot be quashed on the bald averments made in the petition and requested this Court to dismiss this petition, as there is no direct nexus between the acts and omissions committed by the petitioner and to the discharge of official duties.

During hearing, learned counsel for the petitioner Smt. K. Udaya Sri contended that the omissions or commissions allegedly committed by the petitioner are directly connected to discharge of his official duties and not outside the official duties. Therefore, sanction under Section 197 Cr.P.C is mandatory and in the absence of such sanction, the Court is incompetent to take cognizance of the offences punishable under the provisions of Indian penal Code against the petitioner. At the same time, specifically in paragraphs 98 & 99 of the charge sheet, the respondent made a clear assertion that to proceed against this petitioner for the offences punishable under Sections 120-B, 420, 409 IPC and under Sections 13(2) r/w 13(1)(c) & (d) of the P.C. Act, they sought for sanction from the government which is awaited by the date of filing charge sheet. But, no such leave/sanction was accorded by the government till today. The Court below took cognizance of the offences against the petitioner punishable under Sections 120-B, 420, 409 IPC and under Sections 13(2) r/w 13(1)(c) & (d) of the P.C. Act. Therefore, in the absence of sanction either under Section 197 Cr.P.C or under Section 19(1) of the P.C. Act, the proceedings against the petitioner are liable to be quashed.

Except the above contention, no other ground is urged before this Court during hearing. Therefore, the other contention raised in this petition needs no consideration, since the petitioner himself limited his argument to the aspect of sanction as referred above.

Whereas, Sri K. Surender, learned Public Prosecutor for C.B.I contended that the acts or omissions committed by the petitioner/A-3 would not fall within the ambit of discharge of official duties, therefore, no sanction is required under either under Section 197 Cr.P.C or under Section 19(1) of the P.C. Act and fairly conceded that, on the date of retirement from service of the petitioner, the sanction sought by the respondent was rejected by the government and by the date of his retirement, the Court below already took cognizance of the offences punishable under Sections 120-B, 420, 409 IPC and under Sections 13(2) r/w 13(1)(c) & (d) of the P.C. Act, against this petitioner. When the acts or omissions complained against this petitioner are committedwhile he was not discharging his duties as public servant, no sanction is required under Section 197 Cr.P.C to proceed against this petitioner and prayed to dismiss this criminal petition.

Considering rival contentions, perusing the material available on record, the points that arise for consideration are as follows:

1. ***Whether the petitioner can be proceeded for the offences punishable under Sections 13(2) r/w 13(1)(c) & (d) of the P.C Act, without sanction, as required under Section 19(1) of P.C. Act?***

2. ***Whether Trial of the accused for the offences punishable under Sections 120-B, 420, 409 IPC, be proceeded against the petitioner without any prior sanction from the government as required under Section 197 Cr.P.C. If so, whether the proceedings against this petitioner in C.C.No.26 of 2014 in R.C.No.19(A)/2011 dated 21.11.2014 on the file of the Principal Special Judge for C.B.I Cases, Hyderabad, are liable to be quashed.***

<u>P O I N T NO.1</u>

The petitioner allegedly committed offences punishable under Sections 120-B, 420, 409 IPC and under Sections 13(2) r/w 13(1)(c) & (d) of the Act, but cognizance was taken for the offences punishable under Sections 120-B, 420, 409 IPC and under Sections 13(2) r/w 13(1)(c) & (d) of the P.C. Act. The main contention of the learned counsel for the petitioner is that, no sanction, as required under Section 19(1) of the Act was obtained to take cognizance of the offences by the Principal Special Judge for C.B.I Cases, Hyderabad and on that ground alone, the prosecution against this petitioner for the offences punishable under the Indian Penal Code are liable to be quashed.

The power of this Court under Section 482 Cr.P.C is limited and this Court can exercise power under various circumstances enumerated by the Apex Court.

In **State of Haryana** v. **Bhajan Lal**[2] this Court considered in detail the scope of provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the 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.
>
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

[2] 1992 Supp. (1) SCC 335

(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 proceedings 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.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In **R.P. Kapur v. State of Punjab**[3], the Apex Court held as follows:

(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

In view of the guidelines laid down by the Apex Court in the judgments referred supra, if the facts on its face value are taken into consideration, it constitutes an offence, *prima facie* if proved. The Court cannot interfere, except when the Court comes to a conclusion that it is an out come of abuse of process of law.

[3] AIR 1960 SC 866

Even, as per guideline no.2 of ***R.P. Kapur***[3] and guideline no.6 of **Bhajan Lal**[2] case, when prior sanction is required to take cognizance of the offence, if not obtained, the proceedings are liable to be quashed. Therefore, keeping in mind the guidelines issued by the Apex Court in **Bhajan Lal**[2] and ***R.P. Kapur***[3] cases, I would like to examine the issue before this Court.

Section 19(1) of P.C. Act deals with previous sanction necessary for prosecuting a public servant. The word 'public servant' is defined under Section 21 of I.P.C and it is as follows:

> **"21. "Public Servant":-** The words "Public Servant" denote a person falling under any of the descriptions hereinafter following namely:-
>
> *First* - Repealed by AO, 1950
>
> *Second*-Every Commissioned Officer in the Military, Naval or Air Forces of India.
>
> *Third* - Every Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
>
> *Fourth* - Every Officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties;
>
> *Fifth*- Every juryman, assessor, or member of a Panchayat assisting a Court of Justice or public servant;
>
> *Sixth*- Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;
>
> *Seventh*- Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
>
> *Eighth*-Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of

offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth-Every officer whose duty it is, as such, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

Tenth-Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh-Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth-Every person- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service of pay of local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (I of 1956)."

Here, undisputedly, the petitioner is a public servant and he was discharging his public duties. The word 'public servant' is also defined under Section 2(c) of P.C. Act, which reads as follows:

"(c) "public servant" means—

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commission appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co- operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any their teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority."

The petitioner was admittedly a public servant and even according to the allegations made in paragraphs 98 & 99 of the charge sheet, a prior sanction is required to take cognizance for the offences punishable under the provisions of Prevention of Corruption Act, against a public servant.

Section 19(1) of the Act mandates that no court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction 1[save as otherwise provided in the Lokpal and Lokayuktas Act, 2013],—

> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office.

Similarly, Section 19(2) of the Act made it clear that Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

Therefore, the mandate of Section 19(2) is that, the petitioner being an officer of Indian Administrative Service, shall be removed by the Central Government and a prior sanction is required to take cognizance of the offences punishable under Sections 13(2) r/w 13(1)(c) & (d) of the Act, on the day when he retired from service.

The aforementioned offences were committed by the petitioner while he was in service. Therefore, the Trial Court is incompetent to take cognizance of the offences punishable under Sections 13(2) r/w 13(1)(c) & (d) of the Act. Therefore, the proceedings against this petitioner for the offences punishable under Sections 13(2) r/w 13(1)(c) & (d) of the Act are liable to be quashed, as the cognizance was taken by the Court below without prior sanction under Section 19(1) of the Act. Accordingly, the point is answered in favour of the petitioner and against the respondent.

P O I N T NO.2

Learned counsel for the petitioner contended that, to prosecute the petitioner who is a public servant as defined under Section 21 I.P.C, sanction under Section 197 Cr.P.C is required, since the petitioner is removable by the Central Government, he being an I.A.S officer and in the present case, no such prior sanction was obtained to prosecute the petitioner for the offences punishable under Sections 120-B, 420, 409 IPC.

The object and purpose underlying Section 197 Cr.P.C is to afford protection to public servants against frivolous, vexatious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. The larger interest of the efficiency of State administration demands that public servants should be free to perform their official duty fearlessly and undeterred by apprehension of their possible prosecution at the instance of private parties to whom annoyance of injury may have been caused by their legitimate acts done in the discharge of their official duty. Section 197 Cr.P.C is designed to facilitate effective and unhampered performance of their official duty by public servants by providing for scrutiny into the allegations of commission of offence by them by their superior authorities and prior sanction for their prosecution as condition precedent to the cognizance of the case against them by Court. (vide **B.P. Srivastava v. N.D. Mishra**[4])

To consider whether Section 197 Cr.P.C applies or not, the Court has to look into the allegations made in the complaint and ascertain their substance. It is not necessary for the Court to confine itself to the allegations in the complaint, it can take into account all the material on the record when the question is considered, it cannot be made to depend upon the case which the accused may put forward after the proceedings have been started. The special protection provided under Section 197 Cr.P.C should be strictly construed and until material is placed before the Court to justify, invoking of Section 197 Cr.P.C, ordinarily even if the accused be a police officer, he should not be given a special treatment. Section 197 Cr.P.C, if construed too narrowly can never be applied, for, <u>of course, it is no part of an official's duty to commit an offence, and never can be</u>. (vide **Shreekantiah Ramayya Munipalli v. The State of Bombay**[5]).

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[4] AIR 1970 SC 1661
[5] 1955 (1) SCR 1177

Thus, the Court must scrutinise the allegations in the charge sheet and find out whether those omissions or commissions allegedly committed by the petitioner while discharging his official duties based on nexus test. But, at what stage, such question can be considered is again difficult to decide, because of the law declared by the Apex Court in long line of perspective pronouncements.

Of course, the learned counsel for the petitioner placed reliance on the judgment of the Apex Court in **N.K. Ganguly v. Central Bureau of Investigation, New Delhi[6]**, wherein, the Division Bench of the Apex Court held thus:

> ***"Therefore, the provision of Section 197 of Code of Criminal Procedure is squarely applicable to the facts of the case. Prior sanction of the Central Government was required to be taken by the Respondent before the learned Special Judge took cognizance of the offence once the final report was filed Under Section 173(2) of Code of Criminal Procedure"***

Taking advantage of the law declared by the Apex Court in **N.K. Ganguly[6]** case, learned counsel for the petitioner would contend that sanction under Section 197 Cr.P.C is mandatory.

Learned counsel for the petitioner also drawn attention of this Court to the unreported judgment of this Court in **Busi Sam Bob v. The State of Telangana, rep by Special Public Prosecutor of CBI[7]**, wherein, the petitioner therein, one of the accused in the same calendar case who is also an I.A.S. Officer

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[6] (2016) 2 Supreme Court Cases 143
[7] CRLP No.5167 of 2016 dated11.08.2017

allegedly faced similar allegations for the commission of offences punishable under Sections 120-B, 420, 409, 468, 471, 477-A IPC and under Sections 9, 11, 12, 13(2) r/w 13(1)(c) & (d) of the Act, and the learned Single Judge of this Court by placing reliance on **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others**[8], **State of Rajasthan v. Fatehkaran Mehdu**[9] **and Amal Kumar Jha v. State of Chattisgarh and another**[10], held that sanction under Section 197 Cr.P.C is mandatory and the Court cannot take cognizance of the offence under the provisions of Indian Penal Code and in the absence of prior sanction, when the acts or omissions attributed to the petitioners in discharge of their public duty. In view of the decisions relied on by the learned counsel for the petitioner, the law declared by the Apex Court on this question is necessary for reference.

In **Shreekantiah Ramayya Munipalli**[5] **case,** the Supreme Court observed as follows:

> "*Now it is obvious that if Section 197 of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The Section has content and its language must be given meaning. What it says is -*
>
> *when any public servant ..... 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......*
>
> *We have therefore first to concentrate on the word 'offence'.*
>
> *Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the*

[8] 1990 Cri. L.J 1869
[9] 2017 (1) ALD (Crl) 842 (SC)
[10] AIR 2016 SC 2082

present case, the elements alleged against the second accused are, first, that there was an "entrustment" and/or "dominion"; second, that the entrustment and/or dominion was "in his capacity as a public servant"; third, that there was a "disposal"; and fourth, that the disposal was "dishonest". Now it is evident that the entrustment and/or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity. Therefore, the act complained of, namely the disposal, could not have been done in any other way. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because the second accused could not dispose of the goods save by the doing of an official act, namely officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it.

The act of abetment alleged against him stands on the same footing, for his part in the abetment was to permit the disposal of the goods by the doing of an official act and thus "willfully suffer" another person to use them dishonestly: Section 405 of the Indian Penal Code. In both cases, the "offence" in his case would be incomplete without proving the official act.

We therefore hold that Section 197 of the Code of Criminal Procedure applies and that sanction was necessary, and as there was none the trial is vitiated from the start. We therefore quash the proceedings against the second accused as also his conviction and sentence."

In **Devinder Singh and others v. State of Punjab through CBI**[11] the Supreme Court discussed the judgment of **Matajog Dobey v. H.C. Bhari**[12] and held as follows:

"*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*

[11] AIR 2016 SC 1606
[12] 1955(2) SCR 925

> *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 Dubey v. H.C. Bhari: AIR 1956 SC 44 thus:*
>
> *[T]he 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."*
>
> (Emphasis supplied)

In **K.M. Mathew v. State of Kerala and another**[13] wherein Apex Court had observed that even after issuance of process Under Section 204 of the Code, if the accused appears before the Magistrate and establishes that the allegations in the complaint petition do not make out any offence for which process has been issued then the Magistrate will be fully within his powers to drop the proceeding or rescind the process and it is in that connection the Court had observed "if the complaint on the very face of it does not disclose any offence against the accused". The aforesaid observation made in the context of a case made out by the accused

[13] (1992) 1 SCC 217

either for recall of process already issued or for quashing of the proceedings may not apply fully to a case where the sanction Under Section 197(1) of the Code of Criminal Procedure is pleaded as a bar for taking cognizance. The legislative mandate engrafted in Sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance, the accused after appearing before the court on process being issued, by an application indicating that Section 197(1) is attracted merely assists the court to rectify its error where jurisdiction has been exercised which it does not possess. In such a case there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible, for adjudication of the question as to whether in fact Section 197 has any application in the case in hand. It is no longer in dispute and has been indicated by this Court in several cases that the question of sanction can be considered at any stage of the proceedings.

In **Matajog**[12] case the Constitution Bench is of the consistent view that the complaint may not disclose all the facts to decide the question of applicability of Section 197, but facts subsequently coming either on police or judicial inquiry or even in the course of prosecution evidence may establish the necessity for sanction.

In **B. Saha & others v. M.S. Kochar**[14] the Apex Court observed that instead of confining itself to the allegations in the complaint the Magistrate can take into account all the materials on the record at the time when the question is raised and falls for consideration.

In **Pukhraj v. State of Rajasthan**[15] the Apex Court observed that whether sanction is necessary or not may depend from stage to stage. In **Matajog**[12] case, the Constitution Bench had further observed that the necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place the material on record during the course of trial for showing what his duty was and also the acts complained of were so interrelated with his official duty so as to attract the protection afforded by Section 197 of the Code of Criminal Procedure. This being the position it would be unreasonable to hold that the accused even though might have really acted in discharge of his official duty for which the complaints have been lodged yet he will have to wait till the stage under Sub-section (4) Section 246 of the Code is reached or at least till he will be able to bring in relevant materials while cross-examining the prosecution witnesses. On the other hand it would be logical to hold that the

[14] (1979) 4 SCC 177
[15] (1973) 2 SCC 701

matter being one dealing with the jurisdiction of the court to take cognizance, the accused would be entitled to produce the relevant and material documents which can be admitted into evidence without formal proof, for the limited consideration of the court whether the necessary ingredients to attract Section 197 of the Code have been established or not. The question of applicability of Section 197 of the Code and the consequential ouster of jurisdiction of the court to take cognizance without a valid sanction is genetically different from the plea of the accused that the averments in the complaint do not make out an offence and as such the order of cognizance and/or the criminal proceedings be quashed. In the aforesaid premises the Apex Court was of the considered opinion that an accused is not debarred from producing the relevant documentary material which can be legally looked into without any formal proof, in support of the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty thereby requiring sanction of the appropriate authority. Further, the Supreme Court held that considering the facts and circumstances of the case, it prima facie appears that the alleged acts on the part of the Respondents were purported to be in the exercise of official duties. Therefore, a case of sanction under Section 197 Code of Criminal Procedure has been prima facie made out. Whether it was unjustified on the part of the Respondents to take recourse to the actions alleged in the complaint or the Respondents were guilty of excesses committed by them will be gone into in the trial after the required sanction is obtained on the basis of evidences adduced by the parties. At this stage, such questions are not required to be considered because the accused have not yet led evidence in support of their case on merits.

In **P.K. Pradhan v. State of Sikkim represented by the Central Bureau of Investigation[16]** the Apex Court considered the provisions contained in Section 197(1) of the Code of Criminal Procedure whether an offence committed "while acting or purporting to act in the discharge of his official duty" and laid down that the test to determine the aforesaid is that the act complained of must be an offence and must be done in discharge of official duty. In any view of the matter there must be a reasonable connection between the act and the official duty. It does not matter that the act exceeds what is strictly necessary for the discharge of the official duty, since that question would arise only later when the trial proceeds.

Therefore, in view of the judgments in **Matajog[12], K.M. Mathew[13] and P.K. Pradhan[16]** cases, unless, the accused faces the trial, it is difficult to decide whether the act committed by the accused is in relation to discharge of official duties or not. Therefore, at the stage of appearance of the petitioner, the Court cannot quash the proceedings by exercising power under Section 482 Cr.P.C due to lack of sanction, as required under Section 197 Cr.P.C, since the law permits the petitioner to raise such contention at any stage and the Court has to decide whether the

[16] 2001(6) SCC 704

act done by the petitioner is in relation to his official duties or purported to have been done in relation to official duties only after adducing evidence, at the stage when the Trial is not commenced, the Court cannot conclude that the act done by the petitioner was in relation to or purported to have been done in discharge of official duty.

For instance, one of the offence allegedly committed by the petitioner is punishable under Section 120-B I.P.C i.e. criminal conspiracy. The term 'criminal conspiracy' is defined under Section 120-A I.P.C, as when two or more persons agree to do, or cause to be done:- (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy, provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

The petitioner while discharging his duties as Chairman & Housing Commissioner, Andhra Pradesh Housing Board, Hyderabad, is not expected to conspire criminally with the other accused to commit such serious offences punishable under various provisions of Indian Penal Code. But, the proof of criminal conspiracy by direct evidence is arduous task in the prosecution. However, taking into consideration of various factors, the Court can infer that the petitioner committed the offence of criminal conspiracy.

The Apex Court in "***Noor Mohammad Mohd.Yusuf Momin v. The State of Maharashtra***[17]", the Supreme Court clearly drawn distinction between Section 34, Section 109 and Section 120-B I.P.C. The Apex Court held that Section 34, I.P.C embodies the principle of joint liability in the doing of a criminal act, the essence of that liability 'being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. Section 109, I.P.C. on the other hand may be attracted even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission. Turning to the charge under Section 120-B, I.P.C. criminal conspiracy was made a substantive offence in 1913 by the introduction of Chapter V-A in the Indian Penal Code. Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107, I.P.C. A conspiracy from its very nature is generally hatched in secret. It is,

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[17] AIR 1971 SC 885

<u>therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested, quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference, must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material</u>. In fact because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by anyone of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto.

As seen from the principle laid down by the Apex Court in the above judgment, there must be two or three persons to do an unlawful act by illegal means to constitute an offence punishable under Section 120-B I.P.C.

Since, the alleged conspiracy is committed by the petitioner along with the other accused in discharge of his official duties, at this stage, it is difficult to conclude that commission of criminal conspiracy is in discharge of official duty or purported to be in discharge of official duty.

In **Paramjit Kaur (Mrs) v. State of Punjab and Ors.[18],** the Supreme Court directed the Director, CBI to appoint an investigation team headed by a responsible officer to conduct investigation in the kidnapping and whereabouts of the human rights activist and also to appoint a high-powered team to investigate into the alleged human rights violations, while considering scope of Section 197 of Cr.P.C.

The principles emerging from the aforesaid decisions are summarized hereunder:

1. *Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.*

2. *Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 Code of Criminal Procedure has to be construed narrowly and in a restricted manner.*

3. *Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection Under Section 197 Code of Criminal Procedure There cannot be a universal Rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.*

4. *In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary Under Section 197 Code of Criminal Procedure, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 Code of Criminal Procedure would apply.*

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[18] (1996) 7 SCC 20

5. *In case sanction is necessary it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.*

6. *Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.*

7. *Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.*

8. *Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty was. Accused has the right to lead evidence in support of his case on merits.*

9. *In some case it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.*

In view of the guidelines, more particularly, guideline nos.7,8 & 9, the question of sanction can be raised at the time of framing charges and it can be decided *prima facie* on the basis of accusation. However, it is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage. Similarly, question of sanction may arise at any stage of proceedings and it may not be possible to decide the question effectively and finally without affording an opportunity to the defence to adduce evidence and the question of good faith or bad faith may be decided on conclusion of trail. If, the above principles are applied to the present facts of the case, at the stage of taking cognizance, without affording an opportunity to the parties to adduce evidence during trial, cannot quash the proceedings due to lack of prior sanction as required under Section 197 Cr.P.C, since the Court below took cognizance of the offences punishable Sections 120-B, 420, 409 IPC, against the petitioner before his retirement from service.

In view of the principle laid down by the Supreme Court in **Devinder Singh**[11] case, it is difficult to accept the contention of the learned counsel for the petitioner based on the judgment of **N.K. Ganguly**[6] case, though the Presiding Judge of the Division Bench in both the cases is one and the same.

In **Busi Sam Bob**[7], the learned Single Judge of this Court did not discuss anything about the nexus between commission of any offence of the petitioner therein in discharge of their official duty or purported to have done while discharging his official duties. Therefore, leaving it open to the petitioner to raise such plea, I am unable to quash the proceedings against this petitioner on the ground that, no prior sanction was obtained as required under Section 197 Cr.P.C, to take cognizance of the offences punishable under Sections 120-B, 420, 409 IPC. Therefore, the proceedings against this petitioner cannot be quashed at this stage for the offences punishable under Sections 120-B, 420, 409 IPC.

Accordingly, this point is answered in favour of the respondent and against the petitioner.

In view of my foregoing discussion, I am of the considered view that, the proceedings against this petitioner for the offences punishable under Sections 13(2) r/w 13(1)(c) & (d) of the P.C. Act or taking cognizance of the offences punishable under Sections 13(2) r/w 13(1)(c) & (d) of the P.C. Act, is illegal and consequently, the proceedings against the petitioner for the offences punishable under Sections 13(2) r/w 13(1)(c) & (d) of the P.C. Act are quashed, while permitting the Court below to proceed against the petitioner to try along with other accused for the offences punishable under Sections 120-B, 420, 409 IPC and decide whether the acts or omissions committed by the petitioner are in relation to discharge of public duties with reference to Section 197 Cr.P.C, subject to raising such defence by the petitioner during trial.

With the above direction, the criminal petition is partly allowed, quashing the proceedings against this petitioner for the offences punishable under Sections 13(2) r/w 13(1)(c) & (d) of the P.C. Act, while permitting the Court below to proceed against the petitioner to try along with other accused for the offences punishable under Sections 120-B, 420, 409 IPC in C.C.No.26 of 2014 in R.C.No.19(A)/2011 dated 21.11.2014 on the file of the Principal Special Judge for C.B.I Cases, Hyderabad. However, it is left open to the petitioner to raise his pleas, if any, during trial.

In the result, the criminal petition is partly allowed.

Consequently, miscellaneous petitions pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:15.11.2017

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