

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 207 of 2018**

- Kailashnath Phuljhele S/o Late Shri S. L. Phuljhale, Aged About 61 Years
Deputy Director Industries Udyog Bhawan, Ring Road No. 1, Telibandha
Raipur Tahsil And District Raipur Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through Principle Secretary Commerce and Industries
Department, Govt Of Chhattisgarh, Mahanadi Bhawan Naya Raipur, Raipur
Tahsil And District Raipur Chhattisgarh
2. The Secretary Election Commission of India
3. The Superintendent of Police, Special Police Establishment, Lokayukt Office
Raipur Chhattisgarh
4. District Election Officer And Collector Collectorate Durg 48001 Tahsil And
District Durg Chhattisgarh

---- Respondents

For Petitioner	:	Shri V.G. Tamaskar, Advocate
For Respondent/State	:	Shri Ashish Shukla, Dy. AG for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****14/05/2018**

1. Heard.
2. The inherent powers of this Court under Section 482 Cr.P.C. is being
invoked against the order dated 05.01.2018, whereby an application with a
caption under Rule 27 of the C.G. Panchayat Nirvachan Niyam 1995 (for
short 'the Niyam, 1995') has been dismissed.
3. Learned counsel for the petitioner submits that the petitioner is being
criminally prosecuted under the Prevention of Corruption Act, 1988 for an
alleged bribe given to him. It is stated that on the date of the incident, the

petitioner was under the deputation to Election Commission, which would be evident from the document Annexure P-5 dated 20.01.1998, wherein at serial No.17 (3) it would show that the petitioner was appointed on deputation. Subsequently, in terms of Section 28A of the Representation of the People Act 1951 (for short 'the Act, 1951'), the State government was denuded of his power to grant sanction under Section 197 Cr.P.C. He further submits that under the circumstances, when the application was filed to quash the proceeding before the Court below, the Court below was bound to go into it and look into the fact as to whether on the date of sanction, the petitioner was whether was under the control of State Government or the Election Commission. He further submits that as per the document, the document would show that the petitioner being under the deputation of Election Commission as per the law laid down in the matter of ***Umesh Singh Yadav Vs. Collector/District Returning Officer, Balaghat and others*** (1992 M.P.L.J. 173), the State authorities could not have granted permission for sanction.

4. Per contra, learned State counsel opposes the same and submits that on 09.02.1998 while the petitioner was in the capacity of the Director, District Industries Centre had demanded the money on that date the petitioner was not under the deputation of the Election Commission. He further submits that in this case, initially accord was given in the year 1998, which was subject of challenge in WP 1354/2004, wherein the similar contentions of petitioner were dismissed on 19.04.2017, therefore, the present petition is liable to be dismissed.
5. Perused the record and the order of the Court below. Perusal of the record shows that the application captioned under Section 27 A of the Niyam, 1995 was filed wherein a prayer was made that the criminal special case No.7/1998 be dismissed against the petitioner on the ground that on

09.02.1998 which is the date of incident as alleged, the petitioner Kailashnath Phuljhele was on deputation to the Election Commission, therefore, unless & until the accord is given by the Election Commission, the prosecution cannot be continued.

6. Section 28 A of the Representation of the People Act 1951 would be relevant, which is reproduced herein below:-

“28A. Returning officer, presiding officer, etc., deemed to be on deputation to Election Commission.—The returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed under this Part, and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.”

7. The perusal of the order would show that a complaint was made by Ajay Jasuja that in order to provide him land in the industrial estate of Durg to setup a plant of cycle chain cover, the petitioner demanded Rs.74000/- as bribe and out of which Rs.10,000/- was paid as first installment. As against the allegations if Section 28 A of the Act, 1951 is perused it would show that the officers of the State are being appointed in deputation by the Election Commission to conduct the election on and from the date of notification till the date of declaration of the result shall be subject to control, superintendence and discipline of the Election Commission. Therefore, the primary object of Section 28 A of the Act, 1951 would show that it is to conduct the elections in particular State. The object of Section 28 A of the Act, 1951 by inference it would show the officer would hold his lien with the original post wherein he is working and would be only for election commission to discharge his duty as an election officer.

8. in the case of **Devinder Singh & others Vs. State of Punjab** THROUGH CBI

{{(2016) 12 SCC 87}} has laid down the nexus test under Section 197 of the Cr.P.C. and before discharge it is to be tested that whether the complaint made was in disparage of the official capacity or not and when there is no reasonable nexus with the official duty and the complaint is made, then in such case, has laid down the principle as under:-

“39.The principles emerging from the aforesaid decisions are summarized hereunder :

39.1. 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.

39.2 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](#) CrPC has to be construed narrowly and in a restricted manner.

39.3 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](#) Cr.P.C. 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.

39.4 In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary under [Section 197](#) CrPC, 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](#) CrPC would apply.

39.5 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.

39.6 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.

39.7. 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.

39.8. 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. The accused has the right to lead evidence in support of his case on merits.

39.9 In some cases 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.”

9. The law relied by learned counsel for the petitioner and the ratio of it is completely different and is operating in the different field as it was with regard to service jurisprudence and in the instant case the complaint is that the petitioner demanded money out of which Rs.10000/- was paid for which the prosecution under the Prevention of Corruption Act, 1988 was launched. In any case, the petitioner who was holding the official duty was discharging the official duty, the complaint made for demand of bribe cannot be enveloped within the official act, as such the argument advanced by learned counsel for the petitioner is completely misconceived. The petition has no merit it is accordingly dismissed.

Sd/-
Goutam Bhaduri
Judge