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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 29.08.2018

ORDERS PRONOUNCED ON : 03.09.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1OP(MD)No.15605 of 2016 and
CRLMP(MD)Nos.5445, 7418 and 7419 of 2016

Kannan ... Petitioner/Sole Accused
Vs
S.M.Noor Mohamed ... Respondent/Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the charge sheet in CC No.147 of 2015 on the file of the Judicial Magistrate No.II, Ramanathapuram and quash the same.

For Petitioner : Mr.C.Susi Kumar for
Mr.M.Subash Babu
For Respondents : Mr.Veerakathiravan, Senior
Counsel for Mr.C.Jeganathan

ORDER

This petition has been filed to quash the proceedings in CC No.147 of 2015 pending on the file of the learned Judicial Magistrate II, Ramanathapuram.

2.The respondent has filed a private complaint against the petitioner on the ground that while the petitioner was working as Inspector of Police in the District Crime Branch he had registered several cases against the respondent and arrested the respondent at his house. At the time of arrest, the petitioner seized valuable articles from the respondent's house and it was not produced before the Court and thereby the petitioner had taken away the articles. The respondent has further stated in the complaint that the petitioner had intentionally detained the respondent under the Goondas Act and the same was revoked subsequently by the Advisory Board and several other cases filed against the respondent were also quashed by the High Court. While so, on



22.03.2012 the respondent went to the Court at Ramanathapuram to meet his Advocate to discuss about a case and at about 1.30 pm, in front of the Magistrate Court, the petitioner abused the respondent to the effect that the death of the respondent will only be in the hands of the petitioner and the respondent cannot escape from being shot by the petitioner with his revolver. The respondent hearing these words alleged to have been uttered by the petitioner, went into the Court out of fear. This incident resulted in filing of the private complaint by the respondent against the petitioner. The learned Judicial Magistrate -II, Ramanthapuram took cognizance of the complaint for an offence under Section 307 of IPC and also issued summons to the petitioner. The learned Judicial Magistrate before issuance of the summons, had examined the respondent and four other witnesses.

3.The learned Counsel for the petitioner would submit that the respondent is a habitual criminal, who is involved in several crimes. He has also produced a list of seven cases in which, the respondent is the main accused. It is because of the fact that the respondent is a habitual offender, he was detained under Act 14 of 1982.

4.The learned Counsel for the petitioner would further submit that the respondent also gave a complaint before the Additional Superintendent of Police to take action against the petitioner on the ground that the petitioner had taken away the valuables from the house of the respondent at the time of arrest and action must be taken against the petitioner and the valuables must be returned back to the respondent. The Additional Superintendent of Police, Crimes, Ramanathapuram District, conducted a detailed enquiry and submitted a report dated 20.03.2009, wherein he has come to a conclusion that a false complaint has been given by the respondent.

5.The learned Counsel further submitted that it was thereafter, the respondent had chosen to give a private complaint for the alleged offence under Section 307 IPC. The learned Counsel would submit that a reading of the complaint does not make out an offence under Section 307 IPC. The learned Counsel also submitted that the entire complaint is manifestly attended with *mala fide* and the proceedings have been maliciously instituted with an ulterior motive to wreak vengeance against the petitioner and with a view to spite him due to personal grudge. Therefore, the learned Counsel would submit that the



private complaint filed by the respondent deserves to be quashed.

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6. Per contra, the learned Senior Counsel Mr. Veerakathiravan, representing the respondent would submit that the petitioner was involved in registering one case after the other against the respondent and even went to the extent of entering into the house of the respondent and taking away the valuables. The learned Senior Counsel further submitted that a reading of the complaint and also the evidence adduced by four other witnesses apart from the respondent, clearly makes out a *prima facie* case under Section 307 IPC. The learned Senior Counsel further submitted that there are no grounds to quash the private complaint filed by the respondent and the petitioner has to necessarily face the trial and prove his innocence.

7. This Court has carefully considered the submissions made on either side and the materials placed on record.

8. One primary factor about which there is no dispute in this case is that the respondent has complained about the act of the petitioner in discharge of his official duty. The entire allegations in the complaint pertain to the alleged misuse of power by the petitioner, while acting in discharge of his official duty.

9. The primary questions that arise for consideration in this case are:

(a) Whether previous sanction is required under Section 197 of CrPC, before the Court below took cognizance of the private complaint and issued summons to the petitioner?

(b) Whether on a reading of the entire complaint, the offence under Section 307 IPC has been made out?

(c) Whether the complaint is manifestly attended with *mala fide* and is an abuse of process of Court, which requires interference of this Court in exercise of its jurisdiction under Section 482 of CrPC?

10. Insofar as question (a) is concerned, it is clear that the petitioner is a public servant. Section 21 IPC provides for the persons who will fall within the meaning of the expression public servant. The petitioner will clearly fall within the requirement of a public servant under Section 21 IPC. Section 197 CrPC gives a special protection to the public servants. The public servants are treated as a special class of persons enjoying the said protection, so that they can perform their duties without



fear or favour and without threats of malicious prosecution.

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11. It will be appropriate to refer to the judgment of the Hon'ble Supreme Court of India in **Rakesh Kumar Mishra Vs. State of Bihar** and others, reported in (2006) 1 SCC 557, wherein the entire principles have been enumerated by the Supreme Court. The relevant portions of the judgment are extracted hereunder:

8. It would be appropriate to examine the nature of power exercised by the Court under Section 197 of the Code and the extent of protection it affords to public servant, who apart, from various hazards in discharge of their duties, in absence of a provision like the one may be exposed to vexatious prosecutions. Section 197 (1) and (2) of the Code reads as under:

"197. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction

(a) in the case of person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with



the previous sanction of the Central Government."

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9. The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is, if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance no prosecution can be initiated in a Court of Sessions under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or unless the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his knowledge that such offence has been committed. So far public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint, cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty.



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10. Such being the nature of the provision the question is how should the expression, 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', be understood? What does it mean? 'Official' according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In *B. Saha and Ors. v. M. S. Kochar*, [1979] 4 SCC 177, it was held :

"The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197 (1), an Act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution and the said provision."

11. Use of the expression, 'official duty' implies that the act or omission must have been done by the public in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.



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

"The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty. There must be a reasonable connection between the act and the discharge of official duty; the act must



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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."

12. It will also be useful to refer the judgment of the Hon'ble Supreme Court in **Amal Kumar Jha Vs. State of Chhattisgarh and Another**, reported in (2016) 6 SCC 734.

5. This Court in *Shreekantiah Ramayya Munipalli v. The State of Bombay* [1955 (1) SCR 1177] has observed thus :

18. 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 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



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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. This Court in *Matajog Dobey v. H.C. Bhari* [1955 (2) SCR 925] has also considered when sanction is necessary. This Court has laid down thus : Is the need for sanction to be considered as soon as the complaint is lodged and on the allegations therein contained? At first sight, it seems as though there is some support for this view in *Hori Rams* case and also in *Sarjoo Prasad v. The King-Emperor* (1945) F.C.R. 227. *Sulaiman, J.* says that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution. *Varadachariar, J.* also says that the question must be determined with reference to the nature of the allegations made against the public servant in the criminal



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proceeding. But a careful perusal of the later parts of their judgments shows that they did not intent to lay down any such proposition. Sulaiman, J. refers (at page 179) to the prosecution case as disclosed by the complaint or the police report and he winds up the discussion in these words: Of course, if the case as put forward fails or the defence establishes that the act purported to be done is in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground. The other learned Judge also states at page 185, At this stage we have only to see whether the case alleged against the appellant or sought to be proved against him relates to acts done or purporting to be done by him in the execution of his duty. It must be so. The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case. In Bhappa Singh v. Ram Pal Singh & Ors. 1981 (Supp) SCC 12 this Court considered the grant of protection to an officer for official act done in good faith thus :

6. In view of the circumstances mentioned in the last paragraph, there is little room for doubt that the Customs party was not out to commit dacoity either in the jewellery shop or the chaubara, that they also committed no trespass into either of those places, but that the purpose of the raid was to find out if any illegal activity was being carried on therein. The presence of two licensed Gold-smiths in the chaubara speaks volumes in that behalf. It may further be taken for granted that the Customs party was manhandled before they themselves resorted to violence, because there was no reason for them to open fire unless they were resisted in the carrying out of the raid peacefully.



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7. Even though what we have just stated is a general prima facie impression that we have formed at this stage on the materials available to us at present, it may not be possible to come to a conclusive finding about the falsity or otherwise of the complaint. But then we think that it would amount to giving a go-by to Section 108 of the Gold (Control) Act, if cases of this type are allowed to be pursued to their logical conclusion, i.e., to that of conviction or acquittal. In this view of the matter we do not feel inclined to upset the impugned order, even though perhaps the matter may have required further evidence before quashing of the complaint could be held to be fully justified. The appeal is accordingly dismissed. In *State of Maharashtra v. Dr. Budhikota Subbarao* 1993 (3) SCC 339, this Court has considered the meaning of the official act thus : 6. Such being the nature of the provision the question is how should the expression, any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, be understood? What does it mean? Official according to dictionary, means pertaining to an office. And official act or official duty means an act or duty done by an officer in his official capacity. In *S.B. Saha v. M.S. Kochar* (1979) 4 SCC 177 it was held: (SCC pp. 184-85, para 17) The words any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, it is no part of an official duty to commit an offence, and never can be. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is



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entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. Use of the expression, official duty implies that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. In *P. Arulswami v. State of Madras* (1967) 1 SCR 201 this Court after reviewing the authorities right from the days of Federal Court and Privy Council held:

It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable. 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,



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thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in *Matajog 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) If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code



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cannot be disputed. In *State of H.P. v. M.P. Gupta* 2004 (2) SCC 349 this Court in regard to official duty has laid down thus :

11. Such being the nature of the provision, the question is how should the expression, any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, be understood? What does it mean? Official according to the dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In *State of Orissa & Ors. v. Ganesh Chandra Jew* 2004 (8) SCC 40 this Court has laid down that protection under section 197 would be available only when the act done by the public servant is reasonably connected with the discharge of his official duty. This Court has laid down thus : 7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as



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such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. 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 act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls 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 this 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. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. In *K. Kalimuthu v. State* by DSP 2005 SCC 512 this Court has observed that official duty implies that an act or omission must have been done by the public servant within the scope and range of his official duty for protection. This Court has laid down thus :

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

15. The question relating to the need of sanction under Section 197 of the Code is not



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necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. Further, in cases where offences under the Act are concerned, the effect of Section 197, dealing with the question of prejudice has also to be noted. In *Manorama Tiwari & Ors. v. Surendra Nath Rai* 2016 (1) SCC 594, it was held that the appellants were discharging public duties while performing surgery in a Government hospital, hence prosecution was not maintainable without sanction from the State Government. In *State of Madhya Pradesh v. Sheetla Sahai & Ors.* 2009 (8) SCC 617, this Court has laid down thus :

59. For the purpose of attracting the provisions of Section 197 of the Code of Criminal Procedure, it is not necessary that they must act in their official capacity but even where public servants purport to act in their official capacity, the same would attract the provisions of Section 197 of the Code of Criminal Procedure. It was so held by this Court in *Sankaran Moitra v. Sadhna Das* (2006) 4 SCC 584. The question came up for consideration before this Court in *Matajog Dobey v. H.C. Bhari* AIR 1956 SC 44 wherein it was held: (AIR pp. 48-49, para 17) 17. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. But the difference is only in language and not in substance. The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty.

There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what



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is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation. In *Hori Ram Singh v. Crown* 1939 FCR 159 Sulaiman, J. observes:

The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction. The interpretation that found favour with Varadachariar, J. in the same case is stated by him in these terms at p. 56:

There must be something in the nature of the act complained of that attaches it to the official character of the person doing it. In affirming this view, the Judicial Committee of the Privy Council observed in *Gill case* : AIR 1948 PC 128 (IA pp. 59-60) A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office. *Hori Ram case* 1939 FCR 159 is referred to with approval in the later case of *Lieutenant Hector Thomas Huntley v. King Emperor* 1944 FCR 262 but the test laid down that it must be established that the act complained of was an official act appears to us unduly to narrow down the scope of the protection afforded by Section 197 of the Criminal Procedure Code as defined and understood in the earlier case. The decision in *Albert West Meads v. R.* AIR 1948 PC 156 does not carry us any further; it adopts the reasoning in *Gill case* AIR 1948 PC 128.



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60. The said principle has been reiterated by this Court in *B. Saha v. M.S. Kochar* (1979) 4 SCC 177 in the following terms: (SCC pp. 184-85, paras 17 & 18)

17. The words any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, it is no part of an official duty to commit an offence, and never can be. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. As pointed out by Ramaswami, J. in *Baijnath v. State of M.P.* AIR 1966 SC 220 : (AIR p. 227, para 16) 16. It is the quality of the act that is important, and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted.

18. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him. (emphasis in original) In view of the aforesaid discussion, it is clear that the omission complained of due to which offence is stated to have been committed, was intrinsically connected with discharge of official duty of the appellant, as such the protection under section 197 Cr.PC from prosecution without sanction of the competent



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authority, is available to the appellant. Thus, he could not have been prosecuted without sanction. It would be for the competent authority to consider the question of grant of sanction in accordance with law. In case sanction is granted only then the appellant can be prosecuted and not otherwise. Resultantly, the impugned orders are set aside, the appeal is allowed.

13. This Court had an occasion to consider the issue as to the need for sanction in cases instituted on a private complaint in a case which required sanction Under section Sec.188 of Crl.P.C in **Dr.S. Karthikeyan Vs. E.Vedavanam and Another**, reported in (2015) 1 MLJ 517. The relevant portions of the judgment are extracted hereunder:

14. But, in a case instituted on a private complaint since issuance of summons to the accused under Section 204 of Cr.P.C. is preceded by inquiry held by the Magistrate, sanction is required under proviso to Section 188 of Cr.P.C. even to commence such inquiry. If such an inquiry is conducted without there being a sanction from the Central Government, then, the consequential order for issuance of summons to the accused is illegal. To make it clear, I should say that the order taking cognizance by the Magistrate on the private complaint is not illegal since no sanction is required upto the stage of taking cognizance, but, the order under Section 204 of Cr.P.C. issuing summons by holding inquiry without sanction is illegal. Therefore, though the order taking cognizance on the private complaint does not deserve to be quashed, the order issuing summons to the accused under Section 204 of Cr.P.C. deserves to be quashed. The remedy for the complainant is to get sanction from the Central Government as per proviso to Section 188 of Cr.P.C. and produce the same before the trial court. If once such sanction is produced, then, it would be lawful for the learned Magistrate to commence inquiry and then to issue summons under Section 204 of Cr.P.C. to the accused.



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duty. Whenever the offence charged, be it one of commission or omission, which was committed by the public servant either in his official capacity or under colour of the office held by him, obtaining sanction becomes a pre requisite to prosecute the petitioner. As held by this Court, the moment the Magistrate decides to issue summons under Section 204 CrPC, the same could have been done only after obtaining sanction against the petitioner. In this case, this crucial aspect has been lost sight of by the Court below and Court below has taken cognizance and issued summons to the petitioner without sanction. Therefore, the issuance of summons to the petitioner has to be necessarily quashed on this ground.

15.The next question for consideration is whether a reading of the complaint discloses an offence under Section 307 IPC?. To constitute an offence under Section 307 IPC, an intention or knowledge of committing murder and **the doing of an act towards it** must be necessarily present in order to attract the provision of Section 307 IPC. It is true that for the purpose of attracting Section 307 IPC, only the nature of the act done will expose the intention or knowledge of an accused to commit murder and not the consequence of the actual act done for the purpose of carrying out the intention. In this case even on a reading of the complaint, it is seen that the petitioner has orally threatened the respondent that his death will ensue only from the bullet from the revolver of the petitioner and the same threat is again reiterated by the evidence of the respondent and four others. In furtherance of the oral threat, **there was no act towards the intention or knowledge** of the petitioner to commit murder, even as per the averments in the complaint or from the evidence recorded by the court below. Therefore the act complained of by the respondent can by no stretch constitute an offence Under Sec 307 of IPC.

16.In so far as the third issue is concerned, it is seen from the records that several complaints are pending against the respondent. All those complaints are very serious in nature. In some of the complaints, the petitioner is the investigating officer. Therefore, the respondent necessarily had a personal grudge against the petitioner. If the accused persons are allowed freely to file complaints of this nature against the Police Officers, there will be no protection for the Police Officers to discharge their official duty freely and fairly. Except the oral statement of the respondent and four others, there are absolutely no materials found in



the complaint to constitute an offence under Section 307 IPC.

17. This Case squarely falls within the parameters provided in **State of Haryana and others Vs. Bhajan Lal and others** reported in **1992 Supp (1) SCC (335)**. The allegations made in the complaint, even if they are taken on the face value and accepted in their entirety, do not *prima facie* make out a case against the petitioner. The allegations made in the complaint are so absurd and inherently improbable on the basis on which no prudent person can ever reach just conclusion without there being any sufficient grounds for proceeding against the petitioner. It is also clear that the criminal proceeding initiated by the respondent is manifestly attended with *mala fide* with an ulterior motive for wreaking vengeance on the petitioner and with a view to spite him due to personal grudge.

18. This is a clear case of abuse of process of Court and this Court has to necessarily exercise its jurisdiction under Section 482 CrPC to secure the ends of justice.

19. For the foregoing reasons, the criminal proceedings in CC No. 147 of 2015, on the file of the Judicial Magistrate -II, Ramanathapuram, is hereby quashed and as a sequel this criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The Judicial Magistrate-II,
Ramanathapuram.

Copy To:-

The Record Keeper, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr. M. SUBASH BABU, ADVOCATE IN SR No. 82172
+ 1 CC TO M/s. VEERA ASSOCIATES, ADVOCATE IN SR No. 82050

DSK

TE/RSK/SAR-2 : 20/09/2018 : 21P/6C

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order made in
Cr1.O.P. (MD) No. 15605 of 2016
03.09.2018