

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.8685 and 9840 of 2017

COMMON ORDER:

Criminal Petition No.8685 of 2017 is filed by A3 K. Ranta Kishore and Criminal Petition No.9840 of 2017 is filed by A1, A2 and A4 to A8 i.e. Dr. K.Varaprasad, Dr. U. Surya Kumari, Dr. Vishnu Prasad, V. Prem Kumar, M. Manjula, Prameswara Reddy and Dr. MBR Sharma to quash the proceedings against them in PRC No.24 of 2017 on the file of Special Mobile Magistrate, Guntur, for the offences punishable under Sections 120-B and 506 read with 149 IPC and Section 3 (1) (ix), 3 (1) (x) and 3(2)(vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'the Act').

2. The 1st respondent – Dr. Yekula Kiran Kumar, is the de facto complainant, and presently he is working as a Professor of General Surgery in Sri Venkateswara Medical College, Tirupathi.

3. The 1st respondent lodged a private complaint before the Judicial Magistrate of First Class, Special Mobile Court, Guntur, and the Magistrate in turn, by exercising power under Section 156(3) Cr.P.C., referred the case to the police, who in turn registered a crime against the petitioners for various offences, and investigated into the same and filed final report before the Judicial Magistrate of First Class, by referring the case as 'Mistake of fact', while issuing notice to the 1st respondent.

4. On receipt of notice, the 1st respondent filed a protest petition before the Judicial Magistrate of First Class, who in turn, recorded the statement of the 1st respondent and one Gollamudi Raja Sundara Babu as PWs.1 and 2 and took cognizance of the offences punishable under the above mentioned Sections, against the petitioners.

5. The 1st respondent is a Professor in General Surgery in Sri Venkateswara Medical College, Tirupathi. Earlier, he worked as a Professor of General Surgery in Government General Hospital, Guntur Medical College, Guntur. He joined service in the year 1991 as a Civil Assistant Surgeon. In the year 2004, he was promoted and posted as Associate Professor, Sri Ranga Raya Medical College, Kakinada. The 1st respondent belongs to Scheduled Caste category. The petitioners are the superiors of the 1st respondent and the petitioners allegedly discriminated the 1st respondent and denied promotion during the year 2003-2004, and reverted him as Assistant Professor. The petitioners did not implement the order passed by the Andhra Pradesh Administrative Tribunal and failed to follow the roster point with an intention to cause harm to the 1st respondent. The 2nd witness represented to SC and ST Commission about irregularities and the Commission took the complaint and addressed a letter to the Superintendent of Police, Guntur, who in turn, directed the Station House Officer, Nagarampalem, to register the case. Accordingly, the Station House Officer, Nagarampalem Police Station registered a case in Crime No.242 of 2011 under Section 3(1)(x) of the Act. The police sent a report to the Government of Andhra Pradesh and SC & ST Commissioner and after enquiry, report was submitted.

6. On 31.01.2013, A1 to A6 gave notional promotion but subsequently, the said order was withdrawn. A3 worked as a Secretary to the Medical and Health Department, Government of Andhra Pradesh. As the 1st respondent was not promoted intentionally and also withdrawn the notional promotion by A2 to A7 and submitted a false and fabricated report to the Government by A4 to A7 and to the A.P. Administrative

Tribunal by A2 to A4 as such, they are liable for punishment for the offences under the provisions of the Act.

7. It is further contended that on 23.11.2012, the 1st respondent was called to the chambers of the Principal, Medical College, Guntur by A1 and A2 and he was threatened to withdraw the case in Crime No.242 of 2011 filed by the 2nd witness G. Rajasundarababu. A3 also threatened that if the 1st respondent continues the case filed by him, the Government will also take action against him. On 26.08.2013, the 1st respondent approached the Superintendent of Police, Grievance Cell, and the Superintendent of Police entrusted the case to the Deputy Superintendent of Police, Nagarampalem. But, the police did not register case for eight months. Then the 1st respondent filed WP No.7785 of 2014 before this Court and on the directions of this Court, the police registered a case in Crime No.226 of 2014 of Nagarampalem Police Station, against the petitioners for the offences punishable under Sections 506 and 182 IPC and 3 (1) (ix) of the Act. Subsequently, the investigation was handed over to the Circle Inspector and they did not conduct proper enquiry. Again the 1st respondent approached this Court and thereafter, the police conducted investigation and filed final report referring the case as "false". Thereafter, the 1st respondent approached the National Commissioner for Scheduled Castes, New Delhi, as the investigation was not done properly. The Commissioner after elaborate enquiry, had found that the Director of Medical Education produced false and fabricated report to the Government. Hence, the 1st respondent filed a complaint under Section 200 Cr.P.C. before the Judicial Magistrate of First Class, Spl.Mobile Court, Guntur. On 29.07.2017, the Magistrate has passed the following docket order:

"Complainant present. Perused the material on record and heard the counsel for the complainant. As the material available on record

clearly reveals prima facie case against A1 to A8, this Court taken cognizance for the offences punishable under Sections 120-B and 506 read with 149 IPC and Sections 3(1)(ix), 3(1)(x) and 3(2)(vii) of the ST & SC (PoA) Act against A1 to A8. Issue summons to A1 to A8 on payment of process. Call on 31.08.2017.”

8. The order passed by the Magistrate is challenged in the present petitions on various grounds. All the petitioners are employees working in Government of Andhra Pradesh and the Government of Telangana also. The alleged discrimination of the 1st respondent by the petitioners is neither true nor correct. But in such case, the provisions of SC & ST PoA Act cannot be invoked merely because the 1st respondent belongs to Schedule Caste. It is further contended that there is no criminal intimidation to attract the offences punishable under Sections 120B and 506 IPC and that the offences under the SC & ST PoA Act are without any material and the allegations made in the complaint would not constitute the said offences. It is also contended that in the earlier round of litigation, said Rajasundarababu gave a report, which was registered as Crime No.242 of 2011 in Nagarampalem Police Station against one N. Ramana Raju and others. Questioning the registration of the case, the accused therein filed Criminal Petition No.8269 of 2011 and batch before this Court and this Court quashed the proceedings in Crime No.242 of 2011 vide order, dated 01.08.2014. The said order attained finality. The present case is filed before the Magistrate by the 1st respondent with the same allegations. The accused 1, 2, 4 & 8 are the Doctors and they are retired Government employees, aged about 61, 61, 64 and 66 respectively. Whereas A5 is the Deputy Director of Administration, working in the Office of the Director of Medical Education, Government of Telangana and A6 is the Deputy Director of Administration, working in the Office of the Director of Medical Education, Government of Andhra Pradesh and A7 is working as the Administrative Officer in the Office of

the Director of Medical Education, Government of Andhra Pradesh and A3 is working as Member-Administration in the Andhra Pradesh Administrative Tribunal and they are not liable to be prosecuted for the offences allegedly committed by them since a sanction is required under Section 197 Cr.P.C., and in the absence of any material to constitute the offences referred supra, issuing process against these petitioners and taking cognizance of the said offences by the Magistrate is a serious irregularity and it would disrepute the esteem, and the name and fame of these petitioners besides facing criminal proceedings.

9. Sri T. Pradyumna Kumar Reddy, learned counsel for the petitioners contended that the dispute is regarding service conditions of the 1st respondent and when the 1st respondent approached the Tribunal and if for any reason, the order is violated, the remedy available to him is elsewhere, but not by filing a private complaint for the offences under the provisions the SC & ST PoA Act and the IPC, and therefore, it is nothing but abuse of process of the Court and in such cases, the proceedings shall be liable to be quashed. It is also contended that after completion of investigation, when the police filed final report referring the case as 'false', the Magistrate ought not to have taken cognizance, basing on the statements of PWs.1 and 2 without any material and also ordering issue of summons to the petitioners is a matter of serious concern, since, some of the petitioners are highly placed employees in the State Government. Therefore, the order passed by the Magistrate is illegal and the proceedings against the petitioners in abovementioned crime are liable to be quashed.

10. Learned counsel also drew the attention of the this Court to the earlier judgment in the case of the petitioners, which was filed by said Rajasundarababu against these petitioners and others in CrI.P.

No.8269 of 2011 and batch and when the proceedings were quashed earlier on the same allegations, filing of a private complaint, taking cognizance by the Magistrate on the basis of the protest petition would amount to abuse of process and institution of such proceedings would clearly indicate that the proceedings are made to wreak vengeance against these petitioners and therefore, he prayed to quash the proceedings against the petitioners.

11. It is further contended that no sanction under Section 197 Cr.P.C., was obtained to prosecute these petitioners for various offences, and on this ground alone, the proceedings are liable to be quashed. He also contended that the OA filed against these petitioners was dismissed for non-prosecution by the concerned authority.

12. The 1st respondent, party in person, contended that no sanction is required under Section 197 Cr.P.C. to prosecute these petitioners since most of them have retired from the service and there was no nexus between the discharge of duties and committing of such offences. It is further contended that failure to implement the order passed by the Tribunal directing the petitioners to promote the 1st respondent would also constitute an offence. Initially the roster was followed and thereafter several changes were made showing a B.C. candidate against the roster point reserved for SCs and thereby, fabricated the document to overcome his contempt proceedings and consequently, the petitioners have committed a grave crime of tampering and fabrication of records and caused an injury to the 1st respondent and therefore, they are liable for punishment for the offences referred above.

13. The earlier proceedings though filed by PW.2 Rajasundarababu were dismissed, the order will not come in the way of the 1st respondent

and on that ground the proceedings cannot be quashed and finally prayed to dismiss the petitions.

14. Considering the rival contentions and perusing the material, the points that arise for consideration are as follows:

1. Whether a sanction is required to prosecute the petitioners for the offences punishable under Sections 120-B and 506 read with 149 IPC and Sections 3 (1) (ix), 3 (1) (x) and 3 (2) (vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act?

2. Whether the allegations made in the protest petition would constitute an offence punishable under Sections 3 (1) (ix), 3 (1) (x) and 3 (2) (vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act? If not whether the order passed by the Magistrate dated 29.07.2017 against the petitioners in taking cognizance of the offence and ordering process, is an abuse of process of Court, if so liable to be quashed?

3. Whether the quashing of the complaint filed by Rajasundarababu would debar the 1st respondent to prosecute the petitioners?

15. POINT No.1:

The first and foremost contention raised by the counsel for the petitioners is that the petitioners are the public servants removable by the Governor and the State of Andhra Pradesh and therefore, sanction is required under Section 197 Cr.P.C., to prosecute them. A3, who is the petitioner in CrI.P. No.8685 of 2011, is working as a Member – Administration in A.P.A.T. and thereby without sanction, the 1st respondent cannot proceed against A3 for the offences referred supra and the Court below failed to apply its mind to the facts of the case and took cognizance erroneously against these petitioners for the various offences referred supra. It is an admitted fact that A1, A2 and A4 to A8 were Doctors retired from Government employment. When the offence was committed allegedly during service and retired as on the date of filing the complaint, the sanction for prosecution as required under Section 197 Cr.P.C., is not mandatory. Therefore, on this ground the proceedings against A1, A2 and A4 to A8 cannot be quashed. A5, A6 and

A7 are working as Deputy Director of Administration in the office of the Director of Medical Education, Government of Andhra Pradesh and Deputy Director of Administration in the office of the Director of Medical Education, Government of Telangana and the Administrative Officer in the office of the Director of Medical Education, Government of Andhra Pradesh, respectively. The Deputy Directors are the Officers removable by the Governor of the State being Gazetted officers, who were appointed with the sanction of the Governor of the State of Andhra Pradesh. Therefore, a sanction under Section 197 Cr.P.C., is required to take cognizance of the offences against them. Section 197 mandates previous sanction to prosecute any Government Servant, who is removable with the sanction of the Governor or President of India.

16. 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 the 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 or 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*¹).

¹ AIR 1971 sc 1661

17. 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, of course, it is no part of an official's duty to commit an offence, and never can be. (vide *Shreekantiah Ramayya Munipalli v. The State of Bombay*²).

18. 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.

19. 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*³, 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"

² 1955 (1) SCR 1177

³ (2016) 2 Supreme Court Cases 143

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

21. 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 CBI⁴, wherein, the petitioner therein, one of the accused in the same calendar case who is also an I.A.S Officer allegedly faced 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 Niranjana Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others⁵, State of Rajasthan v. Fatehkaran Mehdu⁶ and Amal Kumar Jha v. State of Chattisgarh and another⁷, 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.

22. In Shreekantiah Ramayya Munipalli's case (supra 2), 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

⁴ CRLP No.5167 of 2016 dated 11.08.2017

⁵ 1990 Cri.L.J. 1869

⁶ 2017 (1) ALD (Cri) 842 (SC)

⁷ AIR 2016 sc 2082

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 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."

23. In *Devinder Singh and others v. State of Punjab* through CBI⁸ the Supreme Court discussed the judgment of *Matajog Dobey v. H.C. Bhari*⁹, 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 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)

24. In *K.M. Mathew v. State of Kerala and another*¹⁰ the 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

⁸ AIR 2016 sc 1606

⁹ 1955 (2) SCR 925

¹⁰ (1992) 1 SCC 217

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 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.

25. In Matajog's case (supra 9) 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.

26. In *B. Saha & others v. M.S. Kochar*¹¹ 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.

27. In *Pukhraj v. State of Rajasthan*¹² the Apex Court observed that whether sanction is necessary or not may depend from stage to stage. In *Matajog's* 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 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

¹¹ (1979) 4 SCC 177

¹² (1973) 2 SCC 701

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.

28. In *P.K. Pradhan v. State of Sikkim* represented by the Central Bureau of Investigation¹³ 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

¹³ 2001 (6) SCC 704

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.

29. Therefore, in view of the judgments in Matajog, K. M. Mathew and P.K. Pradhan 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 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.

30. 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 IPC, 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.

31. The Apex Court in Noor Mohammad Mohd.Yusuf Momin v. The State of Maharashtra¹⁴, 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, 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

¹⁴ AIR 1971 SC 885

largely inferential though the inference, must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. 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.

32. 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.

33. 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.

34. In *Paramjit Kaur (Mrs) v. State of Punjab and Ors.*¹⁵, 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.

35. 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*

¹⁵ (1996) 7 SCC 20

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.*
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.*

36. 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 the light of the 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 trial. 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 and 506 read with 149 IPC and Sections 3 (1) (ix), 3 (1) (x) and 3 (2) (vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, against the petitioners.

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

38. In *Busi Sam Bob*, 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 and 506 read with 149 IPC and Sections 3 (1) (ix), 3 (1) (x) and 3 (2) (vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Therefore, the proceedings against the petitioners cannot be quashed at this stage for the offences punishable under Sections 120-B and 506 read with 149 IPC and Sections 3 (1) (ix), 3 (1) (x) and 3 (2) (vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Accordingly, this point is answered in favour of the 1st respondent and against the petitioners, however, it is left open to the petitioners to raise such contention at appropriate stage.

39. POINT Nos.2 and 3:

The 1st respondent is worked as Professor of General Surgery in Guntur Medical College General Hospital, Guntur, and previously worked as Professor of General Surgeon in Sri Venkateswara Medical College, Tirupathi. A promotion was denied to him allegedly by fabricating or tampering with the records and he pursued the matter before the Tribunal and obtained an order and later initiated contempt proceedings against the petitioners and others. However, the contempt proceedings were ended in closure and the reason for closure of contempt proceedings is that the petitioners allegedly tampered the records showing the BC candidates as against the roster point reserved for the

SCs and also prosecuted the proceedings before the SC and ST Commission for not promoting him to the higher post.

40. In paragraph-5 of the complaint a specific allegation is made that after many DPCs, A2 to A6 gave notional promotion on 03.01.2013 with effect from 02.01.2013 bearing proceedings No.1.3.301/ EA1/ 2011, but the notional promotion was withdrawn from the hands of Sri G.Pajasundarababu at the office of DMA, Hyderabad, and the 1st respondent received fax copy of the notional promotion order from the office of Principal, Guntur Medical College. Thus, A2 to A6 fabricated documents allegedly. But, withdrawal of promotion by all the accused referred supra, would not constitute an offence punishable under the provisions of the SC & ST (PoA) Act. It is purely a service matter.

41. A3 worked as a Secretary, Medical and Health Department, Andhra Pradesh. A4 is Director of Medical Education, Hyderabad. A5 is the Deputy Director of Medical Education, A7 is the Retired Superintendent, DMA office, who belongs to the upper caste, whereas the 1st respondent belongs to the schedule caste. Denial of promotion by all the accused referred supra, would constitute an offence punishable under the provisions of SC and ST (PoA) Act. The Magistrate took cognizance of the offences punishable under Section 3 (1) (ix), Section 3 (1) (x) and 3 (2) (vii) of the SC and ST Act. Section 3 (1) (ix) of the SC and ST (PoA) Act deals with the punishment for offence of giving any false or frivolous information to any public servant and thereby caused such public servant to use his lawful power to injury or annoyance of a member of SC or ST. The complaint is silent as to who gave false and frivolous information to anyone of the public servant who arrayed as accused and what injure or annoy to the 1st respondent being

member of the SC was caused except alleged denial of promotion. If any injury or annoyance is caused to the 1st respondent being a member of scheduled caste on account of the false and frivolous information given by anyone of the public servants, the petitioners herein, who in turn acted on the basis of such information, caused injury then only the petitioners are liable for punishment. But here, in this case, except making an allegation that the petitioners tampered record, there is absolutely nothing on record to show that there was tampering of record so as to disable the 1st respondent to get promotion to the higher cadre from the present cadre. In the absence of any details, it is difficult for this Court to conclude prima facie that the petitioners committed any offence punishable under Section 3 (1) (ix) of the SC & ST (PoA) Act. If for any reason any one of the accused tampered or fabricated any record so as to deprive the 1st respondent to get the promotion to the higher post even then the allegations do not attract offence punishable under Section 3 (1) (ix) of the Act since none gave any false and frivolous information to any one of the public servant, the petitioners herein, who in turn, acted on such false and frivolous information for denial of promotion to the 1st respondent. The above petitioners are not the authorities to promote the 1st respondent and there used to be a Departmental Promotion Committee to promote various employees in the department working and the decision has to be taken by DPC not by these petitioners. When a promotion was denied by DPC to the 1st respondent, these petitioners cannot be blamed for denial of such promotion to the 1st respondent to attract the offence punishable under Section 3 (1) (ix) of the SC & ST Act. In the absence of any prima facie material to satisfy this Court that any of these petitioners furnished any false or frivolous information to the DPC, the proceedings against these

petitioners for the offence punishable under Section 3 (1) (ix) of the SC & ST (PoA) Act are liable to be quashed.

42. The other offence allegedly committed by these petitioners and took cognizance by the Magistrate is punishable under Section 3 (1) (x) of the SC & ST Act, which deals with the intentional insult or intimidate with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. Therefore, to constitute the said offence, the accused must have insulted or intimidated the petitioner herein with an intention to humiliate him in the public view. But, there is absolutely no material to prima facie to constitute an offence punishable under Section 3 (1) (x) of the SC & ST (PoA) Act, since denial of promotion to the 1st respondent would not constitute insult or intimidation of the 1st respondent, who is a member of Scheduled Caste, by these petitioners since it is purely a matter relating to service regulated by service rules of the department. In the absence of any allegation in the complaint, it is difficult to take cognizance against the petitioners for the offence punishable under Section 3 (1) (x) of the SC & ST Act and it is a serious illegality committed by the Magistrate.

43. The other offence allegedly committed by these petitioners is punishable under Section 3 (2) (vii) of the SC & ST (PoA) Act. Section 3 (2) (vii) of the said Act deals with the punishment to a public servant who committed an offence under the above section for various offences contained in Sub-Section (2) of Section 3 of the SC & ST (PoA) Act. Sub Section (2) (i) deals with the offence of giving or fabricating false evidence intending thereby to cause or knowing it to be likely that he will thereby cause any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the

time being in force shall be punished with the imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who give or fabricate such false evidence, shall be punished with death. But, here in this case it is not the case of the 1st respondent that based on such false or fabricated evidence, the 1st respondent was convicted for any offence. Therefore, clause (i) of sub Section (2) of Section 3 of SC & ST (PoA) Act has no application to the present facts.

44. Clause (ii) of Sub Section (2) of Section 3 of the Act prescribes punishment for giving or fabricating false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to seven years or upwards and with fine. Clause (ii) of Sub section (2) of Section 3 has also no application to the facts of the present case since the petitioners were not convicted. Similarly, Clause (iii) also has no application since it deals with causing mischief by fire or any explosive substance intending to cause or knowing it to be likely that the will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe. Similarly, Clauses (iv), (v) and (vi) have no application to the present case. Clause (vii) of Sub-Section(2) of Section 3 deals with the punishment against a public servant, commits any offence under Section 3 shall be punishable with imprisonment which shall not be less than one year but which may extend to the punishment for that offence.

45. A special provision is incorporated in Sub-Section (2) to convict a public servant if such public servant commits any of the offences under Section 3 of the Act. But, here in this case, as discussed in the earlier paragraphs, the allegations made in the complaint would not attract offences punishable under Sections 3 (1) (ix), 3 (1) (x) of the Act, does not arise. Therefore, the question of proceedings against these petitioners under Section 3 (2) (vii) of the Act does not arise, though the petitioners and the 1st respondent are public servants.

46. Earlier, basing on a complaint lodged by Rajasundarababu, a case was registered for not promoting the 1st respondent on same allegations. This Court while deciding the petitions filed under Section 482 Cr.P.C., in Crl.P. Nos.8269 of 2011 and batch, made serious comments against the 1st respondent. The allegations in the present complaint and the earlier complaint are one and the same and the subject matter of the dispute was only due to failure of the petitioners to give promotion to the 1st respondent as mentioned in paragraph- 5 of the order. But, at the end of the order, this Court, in paragraph-21, made serious observations which are extracted hereunder for better appreciation:

“21. Before parting with the order, one has to observe that the parliament enacted the SC & ST (PoA) Act with avowed object to prevent atrocities against the members of that community. The scheme of the Act clearly demonstrates that the parliament with an intention to enhance the social dignity and self respect of the members of the SC & ST community incorporated various provisions in the Act. The various provisions of the Act will be a shield but not a sword. In recent days the number of cases registered under this Act is increasing day by day, which clearly manifests the social awareness among the members of the SC & ST. community. The letter and spirit of the constitution of this country is that a citizen of this country should not claim that he can do everything as a matter of right without discharging the social and moral obligations cast on him. Before making an allegation, one should take reasonable care and caution. Lodging a complaint by an association without noticing the factual background may send a wrong signal to the society. The provisions

of the Act should not be used for selfish ends. In the instant case, the possibility of filing of the present complaint by the association in order to achieve the object of the Act without verifying the factual background may not be ruled out. If the association has bestowed its interest prior to filing of the complaint to the rules and regulations governing the promotion avenues as well as the inter-se seniority being followed in the feeder cadre, certainly it would not have ventured to lodge the complaint. The trauma likely to be undergone, more particularly, by person at the helm of affairs to be an accused of moral turpitude on the ground that he has shown discrimination towards down trodden people, is unfathomable. For one reason or the other, the person whose promotion was alleged to have been denied or delayed by the petitioners, has not chosen to invoke the provisions of the Act. Strictly speaking, any dispute pertaining to inter- se seniority or the service matter falls outside the purview of the provisions of the S C & S T (PoA) Act. The parliament in its wisdom visualised the far reaching consequences being faced by the officials who were entrusted with the work of promotions, might have intentionally deleted the service matters from the purview of the Act.

22. Viewed from any angle, the association has no locus standi to fight for the cause related to the service matters. The parliament in its wisdom excluded the service jurisprudence from the purview of S C & S T (PoA) Act. If the intention of the legislature is otherwise, certainly, it would have brought the service matters pertaining to the members of the S C & S T community within the purview of the Act.

47. While making observations mentioned above, this Court quashed the proceedings in CrI.P. Nos.8269 of 2011 and batch. As the earlier complaint lodged by Rajasundarababu was quashed, conveniently, being a highly educated professor in Surgery, the 1st respondent lodged a private complaint which was referred to the police by the Magistrate exercising power under Section 156(3) Cr.P.C., who in turn registered a case against the petitioners and issued FIR and filed final report referring the case as 'false'. But, on the protest petition, the Magistrate, after recording sworn statements of the 1st respondent and Rajasundarababu, took cognizance of the offences against these petitioners based on the same allegations of the earlier complaint. Filing of such complaint by the 1st respondent and taking cognizance against these petitioners for the offences mentioned above,

amounts to abuse of process of the Court. An identical question came up before this Court in K. Aravinda Rao vs. A Sunder Kumar Das (WAMP No.8 of 2015 in WA No.15 of 2015), where a complaint was lodged by A. Sunder Kumar Das, who belongs to Scheduled Caste, for the offence punishable under the provisions of the SC & ST (PoA) Act, for denial of the promotion to the said Das. Division Bench of this Court in 2016 (2) ALD (CrI) 460 (AP) held that those allegations would not constitute offences under the SC & ST (PoA) Act. When an identical question came up before the Karnataka High Court at Bangalore and in CrI.R.P. No.882 of 2006 vide order, dated 18.06.2012, the Karnataka High Court in B. Srinivasa Naik vs.Sri Jayakar Jerom and Others, quashed the proceedings. The facts of the above judgment are relevant for the purpose of applying the principle to the facts of the present case. The petitioner in that case at Bangalore was a permanent employee of Government, lodged a complaint with the Station House Officer, Magadi Road Police Station, Bangalore, alleging that the Officers of the State Government in the capacity as such denied him promotion on the ground that he belongs to Scheduled Caste or Scheduled Tribe community. The Assistant Commissioner of Police, Vijayanagar Sub-Division took up investigation and after a detailed inquiry, filed negative report, which was described as 'B' report. The Magistrate notified about it to the complainant who filed protest petition requesting the Court to reject the negative report and proceed to inquiry.

48. The Magistrate, after considering the protest petition as private complaint and opined in which he made detailed averments showing the material allegations constituting the offence for which he sought the respondent to be tried. The Magistrate after following necessary procedure exonerated the Government authorities, thereupon,

the petitioner therein lodged a complaint against some officers seeking prosecution for several offences under the provisions of the SC & ST (PoA) Act on the plea that the offences committed by them falls within the mischief of Section 3 (viii)(a) of the Act, sworn statement was recorded and produced 20 documents along with the written statement. But, the Magistrate opined that no case was made out and dismissed the complaint. Thereafter, he approached the High Court and the High Court dismissed the petition on the ground that the allegations would not constitute the offences under the provisions of the SC & ST Act and that the allegation made by the petitioner therein that initiation of disciplinary enquiry against him attracts the above offences, does not appear as a tenable ground and therefore, quashed the proceedings.

49. The dispute of denial of promotion to the 1st respondent is purely a service matter governed by Service Rules of the Department and if the 1st respondent is aggrieved by the inaction of the petitioners for not promoting him to the higher cadre, the remedy open to him is to approach the appropriate authorities or Tribunal to redress his grievance. Instead of proceeding against the petitioners before the Administrative Tribunal or before the higher authorities, the 1st respondent had adopted a shortcut method of coercing the petitioners to come to his terms as an arm twisting method by abuse of process of the Court. In such case, the Court can exercise inherent jurisdiction that conferred on the Court to quash the proceedings.

50. Section 482 Cr.P.C., conferred inherent jurisdiction to implement the orders passed on the Court to prevent the abuse of process of the Court and to secure ends of justice. Keeping in view of the limited scope of inherent jurisdiction of the High Court, the Apex

Court in *State of Haryana vs. Bhajanlal*¹⁶ laid down the following guidelines:

- 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.
- (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.

51. In *R.P. Kapur vs. State of Punjab*¹⁷, the Apex Court laid down the following four guidelines which enable this Court to exercise inherent jurisdiction to quash the proceedings to prevent abuse of process of the Court:

¹⁶ 1992 Supp.(1) SCC 335

¹⁷ AIR 1960 SC 866

(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.

52. In view of the guidelines referred supra, the complaint lodged by the 1st respondent against these petitioners with the police and thereafter, filing a protest petition against the final report, is nothing but abuse of process of the Court and the allegations made in the complaint do not disclose commission of any cognizable offence much less the offences referred above. Therefore, as per the guidelines in R.P.Kapur's case and Bhajanlal's case, the proceedings against these petitioners for the offences punishable under Section 3 (1) (ix) and (x) and 3 (2) (vii) of the SC & ST Act, are liable to be quashed.

53. The other offences allegedly committed by these petitioners are punishable under Sections 120-B and 506 read with 149 IPC. Section 120-B IPC prescribes the punishment for the offence of criminal conspiracy. The definition of the word 'Criminal Conspiracy' as per Section 120-A IPC is as follows:

"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.

54. An essential ingredient to the offence of the criminal conspiracy is agreement to commit an offence. Mere proof of such an agreement is sufficient to establish criminal conspiracy.

55. In the present case, there is absolutely nothing to establish that there was an agreement among the petitioners to commit an act by illegal means or an illegal act by illegal means. In the absence of any allegation about the agreement to commit an illegal act by illegal means, the Court cannot proceed against these petitioners.

56. Section 506 IPC deals with punishment for criminal intimidation. The word 'criminal intimidation' is defined under Section 503 IPC and it reads as follows:

"To constitute an offence punishable under Section 506 IPC, there must be a threat by one to the other with an injury to his person or reputation or property of any one in whom that person is interested with an intention to cause alarm to that person or to cause that person to do any act which he is not legally bound to do."

57. But, in the present facts of the case, the allegation is that in the year 2002, Accused Nos.1 to 3 called the 1st respondent to the Chambers of the Principal, Guntur Medical College and demanded him to withdraw the complaints. That would not constitute an offence punishable under Section 506 IPC since they did not threaten to cause injury to the person of the 1st respondent or reputation of the property, to constitute an offence under Section 506 IPC, that to about 16 years ago.

56. The 1st respondent, who belongs to Scheduled Caste, was appointed as Professor and working as such in the Department. Taking advantage that he belongs to the Scheduled Caste community, to achieve his object of getting promotion to the higher cadre, he resorted to this litigation against the Superior Officers of the department. The cause of taking cognizance of such offences even by the Courts even

though it relates to service conditions of an employee, it creates lot of apprehension in the minds of the Superior or controlling authorities to take any action against the employee who belongs to scheduled caste, and thereby it leads to anarchy in the administration of the department. Some times the controlling authorities are unable to control the subordinates, who belong to scheduled caste, on account of such atrocious threats against the superior authorities by the employees belonging to the scheduled castes or scheduled tribes, in view of heavy penalties prescribed under the provisions of the SC & ST (PoA) Act and the accused are not entitled to claim benefit under Section 438 Cr.P.C., in view of Section 18 of the Act i.e. they are not entitled to claim a pre-arrest bail if any person allegedly committed offence under the provisions of the SC & ST (PoA) Act. Sometimes, the employees belonging to Scheduled Caste and Scheduled Tribes are forcing the higher authorities to come to their terms though they are not discharging their duties, under the threat of lodging a complaint against them for various offences as per the provisions of the SC & ST (PoA) Act. If such acts are encouraged, it would harshly effect the administrative capacity of the higher authorities, reduces administrative or controlling capacity since they are always working in hostile atmosphere under the threat of lodging complaints against them by the subordinate employees belonging to the Scheduled Caste and Scheduled Tribe. If the provisions of those acts are applied to the acts done in connection to their employment while discharging their duties, it is difficult for any officer to have control over the subordinate employees in any department. Therefore, keeping in view of the ill effects of such complaints and the administration, the Courts must weigh balance between the alleged acts committed by the employees belonging to the higher caste against the

interests of the employees belonging to Scheduled Caste and Scheduled Tribe and decide those cases with sense of responsibility while taking cognizance since taking of cognizance is a matter having serious consequences as held by the Apex Court in Pepsi Foods Limited Vs. Special Judicial Magistrate and Ors.¹⁸, where the Apex Court held as follows:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

57. In the present case on hand, the Magistrate passed a cryptic order, dated 29.07.2017, taking cognizance and ordering issue of summons against these petitioners though the dispute is akin to service. Thus, the Magistrate did not apply his mind to the facts and material available on record and took cognizance erroneously. Therefore, by applying principle laid down in R.P. Kapur's and Bhajanlal's cases, I am of the considered view that the Magistrate failed to verify the allegations to find out whether the petitioners committed any offence much less the offences punishable under Sections 120-B and 506 read with 149 IPC and Section 3 (1) (ix) and (x) and Section 3 (2) (vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

¹⁸ 1998 (5) SCC 749

but took cognizance, passed a cryptic order, which is illegal in terms of the judgment rendered by the Apex Court in Pepsi Foods Limited case. Moreover, an identical question is pending for adjudication before Apex Court in D.V.Subash Kasinath Mahajar vs. State of Maharashtra in SLP CrI. No.5661 of 2017.

58. In view of my foregoing discussion, I find that the 1st respondent failed to make out a *prima facie* case against these petitioners and filed the present complaint to wreck vengeance and by abusing process of Court that the dispute relates to service conditions of an employee in the Medical and Health Department of the State. In such case, continuation of proceedings against these petitioners in PRC No.24 of 2017 on the file of the Special Mobile Magistrate, Guntur, is illegal and are liable to be quashed by the law declared by the Apex Court in the decisions referred above.

59. In the result, both the Criminal Petitions are allowed quashing the proceedings against the petitioners in PRC No.24 of 2017 on the file of the Special Mobile Magistrate, Guntur.

Miscellaneous petitions pending if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:27.02.2018
KTL