

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.58 & 2613 of 2017

COMMON ORDER:

CrI.P.No.58 of 2017 is filed by A.1-Sri C.Sudhakar Reddy, RDO Nandyal and CrI.P.No.2613 of 2017 is filed by A.2 Sri V.Venkata Ramana, Inspector of Police, Nandyal in seeking to quash the proceedings in SC ST CC.No.29 of 2016 on the file of Special Judge for ST and SC Cases-cum-VI Additional District & Sessions Judge, Kurnool, which is outcome of private complaint of the 2nd respondent-defacto complainant P.Pamulety, an advocate by avocation at Nandyal, taken cognizance for the offences punishable under Sections 3(1)(p)(r)(s)(u)(z), 3(2)(vii) of Scheduled Cates & Scheduled Tribes (Prevention of Atrocities) amendment Act 2015 (for short 'the Act') and Section 341 r/w 34 IPC.

2. Heard learned counsel for the respective petitioners and the learned counsel for the defacto complainant in both the matters for common disposal and also the learned Public Prosecutor representing the 1st respondent-State and perused the entire material on record.

3. Before coming to the grounds in the quash petition, the factual matrix necessary to refer is that there is a complaint in the form of report and not in the form of private complaint, dated 28.06.2016 filed by the 2nd respondent-defacto complainant in Telugu script before the learned Special Judge supra saying he is advocate by profession at

Nandyal, one of his client S. Vimala Rani W/o. Nararaja Reddy expressed her grief on 07.06.2016 in the Nava Nirmana Deeksha program at Allagadda complaining against revenue authorities with regard to non-issuance of pattadar passbooks, the officers then stated in wiping out their tears of they will inform the RDO and see that justice will be done. However on next day i.e., 08.06.2016 there is a news item published as disputed payment of bribe the officers are not working properly in discharge of their official duties. On that day evening said Vimala Rani along with her papers came to Nava Nirmana Deeksha program and submitted a representation to the RDO. It was on next day 09.06.2016 the RDO telephoned to the MRI, Chagalamarri and the VRO in turn told to meet the RDO at Nandyal. On 10.06.2016 next day at 10.00 AM said Vimala Rani along with her mother Jojamma went to the RDO, Nandyal and submitted further details. At that time the RDO put a question to Vimala Rani as to when her husband died and she did not reply and immediately he returned the papers to her. He questioned how she can forgot the date of death of her husband and thrown the papers on her. She while weeping telephoned to him and at about 11.00 AM he went to the RDO-Sudhakar Reddy-A1 and introduced himself as advocate practising at Nandyal by name Sri Pamulety and said Vimala Rani is his client who approached him in relation to getting of pattadar passbooks and shown his ID card. The RDO used the words

merely because he happened to be an advocate and he replied to him and thrown his ID card. He questioned the RDO how far he justified to do so mere because he happened to be an SC advocate and came to render justice to his client and the RDO responded saying he has seen many advocates like the complainant in saying they used to take bribes and move around the office and interfere with administration without any concern and merely because happened to be an advocate are there any horns born to him and had he chooses he can cause cancel his enrolment and also his caste certificate and asked him to go out by saying he can call after half an hour and made him to wait till 4 PM without calling. Said Vimala Rani telephoned to the Joint Collector and informed the same and the Joint Collector through the camp clerk telephoned to the Vimala Rani saying he talked to the RDO who is on video conference and later came and met the RDO. After sometime when said Vimala Rani along with complainant-Pamulety were waiting the CPI leaders P.Muralidhar, D.Tulasi Ramaiah and A. Nagamalleswara Reddy in relation to the issue of Vimala Rani met the Senior Assistant Madhusudhan of RDO office and Rc.No.255/2016/A dated 08.06.2016. Pursuant to the newspaper clipping the file received from Tahsildar, Chagalamarri by RDO, Nandyal was shown and when asked to give Xerox copy he did not give but permitted to reduce to what it contains and it was mentioned therein of the mother in law of Vimala, executed a document to her eldest son Indra

Prasad Reddy as her successor and the legal heir of Indra Prasad Reddy by name Singam Rajashekar Reddy obtained pattader passbook No.48713, account No.343 and Appi Reddy, Prameela Devi and Rammohan Reddy purchased from him. It is further stated later the advocate Pamulety and his client Vimala Rani and her mother Jojamma met the RDO and he asked the RDO to acknowledge about their approaching him in writing for which RDO questioned as to can they ask any written acknowledgment of their presence and also questioned about telephoning to the Joint Collector by him and his client and asked to go out of his office. Said Advocate Pamulety questioned the RDO in asking to go out of his office when he came for his client, RDO stated not bound to respond him and RDO in his cell phone photographed the same and asked to call the police and then III Town ASI and constable came there and removed the cell phones of them and arrested them on the evening of Friday at 5.00 PM and kept at III Town PS and their names and address noted and given to the III Town CI-A2 and the CI received therefrom complaint of RDO, he said Pamulety even informed that he is advocate the CI questioned was what if an advocate and did not even enquire them and left the police station and they were kept till next day 3.00 PM without any enquiry in the police station and produced before the JFCM by Saturday evening and he made a representation of he is suffering from ill-health before the Magistrate, however he remanded all of

them to judicial custody to the Nandyal Sub Jail. It is stated further that 2 years prior to that he suffered with heart problem and having seen the jail climate in the jail cell he lost consciousness and one Muralidhar who was also in the cell raised cries and the jail officer Satyanarayana came there and decided to shift him to hospital and telephoned to III Town Police Station for escort and the CI III Town or SI III Town did not respond even to the landline of the Police Station from jail landline called and it was at about 9 PM on that Saturday as a last resort when telephoned to the landline of PS, head constable informed of telephoned to CI and II town constables from II Town, HC and 2 constables when telephoned to II Town Police Station and they put handcuffs to him (advocate Pamulety) and even he questioned they did not heed by saying it is order of their Inspector and taken therefrom to Government Hospital, Nandyal and informed to provide any treatment early and he was administered saline and while so even he asked to go for urinals they did not believe and questioned as if he was speaking falsehood with abuse and cause stopped the saline administering and did not remove the handcuffs and he was asked with those handcuffs to go for urinals and thereafter in an auto got back to the jail by unheeded to the request to continue his treatment in the hospital and further administering of saline and he was in precarious situation. The co-jailor in the cell Muralidhar has given mental strength to him with breath analysis exercise

and he spent till next morning with that difficulty and on next day the jail authorities informed escort people to come by 9.00 AM to send to hospital and 2 constables again came and put handcuffs and taken to Government hospital by made him to walk and the Doctor examined his pulse and he was admitted in ICU with handcuffs kept there and at the noon time III Town police came and continued accordingly. The co-advocates Rajendraprasad, Satyam, Krishna Lingamaiah came there to see him on seeing the handcuffs perturbed and shocked and they telephoned to III Town Police Station who stated they are no way concern and on next day that is Monday at about 11 AM Inspector Venkata Ramana came and asked him as to why he is playing dramas and tamashas and asked to continue the treatment with handcuffs in the Hospital and even threatened the hospital nurses and Doctors and he suffered mentally therefrom. On that day the advocate association Nandyal convened a general body meeting and boycotted the Courts and came in writing to the III Town Police Station and raised rastarokos for nearly one hour and they came to the hospital to see him and noticed with handcuffs hence to take action.

4. The learned Special Judge by impugned order dated 25.10.2016 taken the case on file against A.1 and A.2 supra for the offences supra and against A.3 & A.4 for the offences punishable under Sections 341, 195, 503 & 506 r/w 34 IPC

and ordered to issue summons to execute personal bonds for appearance before the Court.

5. The present quash petition is in impugning the same saying the impugned cognizance order of the learned Sessions Judge is outcome of non-application of mind and without even considering the bar under Section 197 Cr.P.C. to take cognizance on any private complaint against public servant and without even any discussion to how the ingredients of the offence under Section 3 of the Act applies against any of them to take cognizance and the learned Judge in taking cognizance failed to consider the whole issue between the 2nd respondent and A.1-RDO regarding issuance of pattedar passbooks by Tahsildar which is purely a civil dispute. The very complaint of the 2nd respondent vis-à-vis sworn statement in tune to it is the subordinate staff acted rudely under the alleged directions of petitioner with no basis and what was after submitted to judicial custody for anything there is no role of RDO and Inspector of Police but for court custody with sub jail to send by jail authorities with escort if any secured to provide and the contentions contra are baseless and false and brought into being the crime registered by the Inspector of Police was on the report of the RDO for the offence under Section 353 IPC against the 2nd respondent and he was arrested and submitted to judicial custody from the order of the learned Magistrate and not in police custody and thereby the proceedings are liable to be quashed.

6. Whereas the learned counsel for the defacto complainant submitted that in the hospital bed as per the newspaper clipping of Sakshi and Andhra Jyothi daily 14.06.2016 and Eenadu daily of even date the complainant was while on hospital bed under treatment to his leg there was a chain tied to the cot and it is grave ill-treatment for which the accused persons are responsible and there is a prima facie accusation against the accused Nos.1 & 2/petitioners who exceeded their jurisdiction and not entitled to the protection under Section 197 Cr.P.C. and there is nothing to interfere with the cognizance order of the learned Magistrate and the quash petitions are liable to be dismissed.

7. Heard and perused the material on record from what is discussed supra.

8. From perusal of the very report of the defacto complainant that was taken as private complaint by recording the sworn statement by learned Special Judge what all mentioned was in exchange of words between him and RDO in relation to his representation of his client for grant of pattadar passbook. In fact the RDO has given a complaint against the defacto complainant for which the crime was registered as FIR and it is a cognizable offence for the offence under Section 353 IPC at the office of the RDO while he was discharging the duties from what was stated of the defacto complainant used criminal force. There is nothing to find fault the Inspector of Police who is not even the SHO for the

crime was registered by the SHO and the complainant who was available at RDO and according to him even therefrom arrested and within 24 hours produced by the police to the judicial custody before the learned Magistrate and the learned Magistrate has taken him to judicial custody and remanded to the Sub Jail, Nandyal. To that extent there is no offence punishable under Section 3(1)&(2) of the Act applicable even taken from the face value of the averments in the complaint and not specifically any intentional insult on the complainant but for if at all a general utterance from what the defacto complainant of he is an SC advocate in response of the RDO stated he has seen many such SC advocates and in general or if at all sarcastically with no reason they go around the office and merely because SC advocate there is nothing any special to recognize and if at all threatened that if at all he chooses can allegedly cancel his enrollment or caste certificate and asked him to wait outside and what is stated is not even called in the evening and what is stated however the complainant called the Joint Collector and Joint Collector stated RDO busy with video conference and he could talk and in the meantime so called CPI leaders came to the RDO office verified with the senior assistant the file and noted what it contains. It is what the defacto complainant further stated demanded the RDO to give in writing endorsement about his presence along with his so called client. It is not even his case that he filed any vakalat in any pending matter by filing

any written explanation and it was not received. Without vakalat he has no right to represent a party even as advocate for such claim and it is not even his case that he filed with vakalat with any representation petition before the RDO and even RDO got jurisdiction and he refused to entertain. Merely because RDO refused and questioned in asking to give return acknowledgment of his appearance RDO cannot be implicated in a SC & ST (POA) Act case. Even for that from heated exchanges from what he questioned the RDO asked to go out or to call police or covered by video coverage. What all further stated is III Town Police Station ASI and head constable and came there and arrested him and brought to the police station and taken the address of him and the other 2 and they received the written report of RDO and registered the crime and he informed the Inspector came there that he is an SC advocate and the CI unheeded the even stated as advocate by kept him in the cell and later produced before the Court within 24 hours. It is not even his case that any advocate came and represented on his behalf before the CI or SHO for any station bail and its entitlement. The issue happened on Friday and he was produced on Saturday within 24 hours before the learned Magistrate concerned with remand report and taken to judicial custody. Nothing prevented him or any body on his behalf even before to file any search warrant that was not done much less any anticipatory bail.

9. Coming to the subsequent events after admitted in jail within 24 hours of judicial custody from the judicial remand of order of learned Magistrate, what was happened is at jail he lost conscious on seeing the jail climate and the co jailer in the cell raised crises and jail authorities asked III Town or II Town police to provide escort to cause shift and the escort police taken to hospital with handcuffs. Where is the direct role of RDO or Inspector from the III Town PS for the escort police of II Town PS of at the request of jail authorities provided the escort to take from Jail to Hospital and with handcuffs if any. These aspects not even considered by the learned Special Judge in taking cognizance from the said report taken as private complaint with sworn statement of said version in registering the case under SC ST Act or for any wrongful restraint. Leave apart what the report given by the RDO from what the defacto complainant in his very complaint says approached the RDO in relation to the pattadar passbook for RDO concerned to discharge the official duty where for what all happened complaint given that is end of the role of the RDO and not for subsequent events responsible with no role as it is the police that registered the crime and arrested him, even for the so called any abuse by RDO referred supra to register any crime the sanction is essential even it is while in discharge of official duties asked him to go out or when he claimed as SC in saying he has seen many SC advocates etc., words and without sanction the

question of taking cognizance does not arise. Likewise even coming to the Inspector of Police even not heeded on intimation about he is SC advocate when the III Town police having registered the crime for the offence under Section 353 IPC also that kept in cell of the police station and when Inspector there not chosen to release him and if at all he has claimed as advocate there is no concession and thereby so what. It is even taken any exceeding of limit; it is only in discharge of official duty there also sanction is a prerequisite.

10. What all the order of the learned Special Judge in this regard reads is that PW.1-P.Pamulety and PW.2-Vimala Rani stated of A.1-RDO abused PW.1 in the name of caste for asking him to discharge his duties as RDO in the matter of PW.2, in a manner unbecoming of a public servant and PW.3 also stated of A.1-RDO by influencing A.2-Inspector foisted the crime No.130 of 2016 and the sworn statement goes to show they were arrested in the evening at 5 PM and taken to police station and A.1 prepared the complaint and sent the same to police at 8.00 PM and the arrest is prior to the complaint and thereby they acted illegally. It is not even the case that Inspector personally came to the RDO office and arrested them, but the III Town police and who arrested and brought to the police station and shown arrest and kept in the police station. Once it is the ASI and constable that is allegedly arrested and not the Inspector, how the learned

Special Judge can come to such a conclusion in his order at Para 7 as if A.1 and A.2 acted illegally and perpetrators of illegality for said arrest and brought to III Town police station and shown arrest in the crime registered by the SHO only. A.3 and A.4 are the constables who took PW.1 to the hospital and jail with so called handcuffing to the leg tied to the cot in saying there is wrongful restraint. The legal position of handcuffing is not easily resorted to unless he is a hardcore. The learned Special Judge cannot presume for his observation in Para 9 that without instructions or order of A.2, A.3 and A.4 could not resort to handcuffing. Thereby A.2 is liable or in his conclusion in Paras 9 & 10 as if there is prima facie case against A.2 also for the offence under Section 341 r/w 34 IPC along with A.3 & A.4 including under Section 3(1)(p) and Section 3(2)(vii) of the SC & ST (POA) Act so also against RDO under Section 3(1)(p)(r)(s)(u)(z) and 3(2)(vii) of the Act, no way sustains.

11. It is one of the contentions of the defacto complainant is not an SC but Christian and placed reliance on the expression of the three judge bench in **State of Kerala Vs. Chandramohan**¹ of change of status by conversion into Christianity ceased to be a Hindu to claim SC & ST status for the conversion will not made him to continue as member of ST or SC as upon conversion the person may be governed by different law governing the community to which originally he

¹ 2004 (3) SCC 429

belongs. It is a matter which requires a detailed discussion on facts by letting evidence and premature to go into unless it is shown by any documentary proof of he is a converted Christian and ceased to be an SC.

12. In **S.Bala Krishna Vs. The State of Telangana rep. by its Public Prosecutor**², this Court held at Paras 17 to 22 as follows:

“17. Section 197 of Cr.P.C. reads as follows:-

197. Prosecution of Judges and public servants.

(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 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 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: 1 Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression " State Government" occurring therein, the expression " Central Government" were substituted.

² Crl.P.No.4319 of 2015, dt. 28.01.2016 (2016 (2) ALT (Crl.)AP 428)

(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.

(3) The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression " Central Government" occurring therein, the expression " State Government" were substituted.

(3A) 1 Notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 , receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central

Government in such matter to accord sanction and for the court to take cognizance thereon.] (4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

18. As per Section 197(1) supra the sanction is mandatory from the government concerned of the public servant, the accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of official duty and without such previous sanction, no Court shall take cognizance such alleging offences. In three judge Bench expression of Apex Court in P.K.Pradhan Vs. State of Sikkim Rep. by the CBI held at paras-5 to 16 that referring to several of the earlier expressions right from Hori Ramsingh Vs. Emperor , HHB Gill Vs. the King , Amrik Singh Vs. State of Pepsu Sreekantiah Ramayya Munipalli Vs. State of Bombay , Matajog Dobey Vs. H.C.Bhari , Omprakash Gupta Vs. State of U.P. , B.Saha Vs. M.S. Kochar , Bajjnath Gupta Vs. State of Madhya Pradesh , Abdul Vahab Ansari Vs. State of Bihar , K.Satwant Singh Vs. State of Punjab observed in para- 5 that the legislative mandate engrafted in sub section (1) of Section 197 debarring a court from taking cognizance of an offence except with the 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 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. Different tests have been laid down

in decided cases to ascertain the scope and 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." 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 for determination 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 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 a court has to find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of situation and further discussing in para-6 from Hori Ram Singh supra observed that the question was considered as to whether the protection under Section 197 of the Code can be confined only to such acts of the public servant which are 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, and in para-8 referring to Sreekantiah Ramavva Munipalli supra quoting Hori Ram Singh supra observed that Section 197 of the Code should not be construed in such a narrow way so that the same 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." In para-9 referring to Amrik Singh supra held that held Section 197 of Cr.P.C. that if the discharge of official duty and the act of the accused complained of are inseparable, sanction under Section 197 of the Code would be necessary. In para-12 referring to Sureshkumar Bhikamchand Jain supra referring to earlier expression of Matajog Dobey held the legislative mandate engrafted in subsection (1) of Section 197 debarring a court from taking cognizance of an offence except with previous sanction of the Government concerned, this Court has laid down that he said provision is a prohibition imposed by the statute from taking cognizance and, as such, exercising jurisdiction of the court in the matter of taking cognizance and, therefore, a court will not be justified in taking cognizance of the offence without such sanction on a finding that the acts complained of are in excess of the discharge of the official duty of the government servant concerned. Para-14 to 16 referring to the Constitutional Board expressions of K.Satwanth Singh and also Om Prakash Gupta supra observed that for claiming protection u/sec. 197 Cr.P.C. It has to be shown reasonable connection between the Act, complained of and discharge of official duty. It is well settled that the question of sanction u/sec. 197 of Cr.P.C. can be raised at any time after the cognizance, may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well, any appeal. In Rajib Ranjan Vs. R.Vijakumar two judge Bench at paras 14 to 18, it is observed sanction however is necessary if the offence alleged against the public servant is committed by him after acting or purporting to act in the discharge of his official duties as held in Buddi Kota Subbar Rao Vs.K.Prakasham para-6 the fact or omission on facts found reasonable connection that

discharge of his duty by the accused thereby sanction is required that cannot be disputed. In Raghunath Anant Govilkar Vs. State of Maharashtra supra referring to Sreekantaiah and Amrik Singh supra observed if the act complained of is concerned with official duties, sanction would be necessary and therefrom observed if a public servant enters into a criminal conspiracy and indulges in criminal misconduct and misdemeanor, it is not to be treated as an act in discharge of official duty thereby in that case sanction held not necessary. Even from Rajib Ranjan supra, the principle of law laid down of the act complaint of no way connected to the discharge of duties, sanction is imposed is reiterated. In Inspector of Police Vs. Battenapatla Venkateramaiah the three judge Bench expression of the Apex Court referring to Rajib Ranjan supra observed the facts of that case while reiterating the principle of the protection u/sec. 197 given to the public servant is in the public interest and in Subramanian Swamy Vs. Manmohan Singh -it was held that the provisions dealing with sanction u/sec. 197 of Cr.P.C. must be construed in such a manner as to advance the cause of honesty, justice and good governance and the para-74 therein speaks that public servants are treated as a special class of persons enjoying the special protection so that they can perform their duties without fear and favour and without threats of malicious prosecution. Thus even from this Battenapatla Venkata Ratnam supra if it is connected with the discharge of duties even there is excess sanction is required.

19. In Om Prakash V. State of Jharkhand and Kailashpathi Singh V. Rajiv Ranjan Singh (common order) in relation to the encounter killings from the attack against police, it was observed on the scope of Section 197 Cr.P.C that prior sanction is a pre-condition for taking cognizance of offences against the

police officials and there is no requirement for such accused officials to wait till framing of charges to raise the plea. In *Sankaran Moitra V. Sadhana Das* it was held that when police fired in defence and in performance of their official duties cannot be prosecuted without sanction under Section 197 Cr.P.C and therefrom quashed the prosecution initiated against them by the Apex Court. In *N.K.Ganguly Vs. CBI, New Delhi* though a case under Section 19 of the P.C.Act referring to Section 197 of Cr.P.C. also referring to the earlier three judge Bench expression of *R.R. Chary Vs. State of U.P.* on the scope of Section 197 of Cr.P.C. the word cognizance indicates very initially of proceedings against the public servant and the three judge Bench in *Amrik singh supra* held the requirement of sanction can be raised at any stage and in *Matajog Dubey supra* it was held Section 197 of Cr.P.c is not ultra vires to Article 14 of the Constitution of India, and it is imperative to obtain sanction of the alleged offence is committed in discharge of official duty by the accused in saying without sanction the proceedings are unsustainable also referring to the conclusion, several expressions including *Srikanthaiah and Hori Ramsingh*, a Federal Court and *Satwanth Singh* of Constitutional Bench expression and *Baidyanath Gupta supra* in concluding that if the application of the Cr.P.C. of also held in another Constitutional Bench expression *B.Saha supra* is that the offence charged for want of commission or omission must be one which has been committed by the public servant either in his official capacity or under the colour of the office held by him. In another recent expression of the Apex Court in *Nanjappa Vs. State of Karnataka* . No doubt the case under Section 19 of P.C. Act by also referring to several expressions including u/sec.197 of Cr.P.C. including the Constitutional Bench expressions of

B.Saha, Badrinath Tripathi supra and State of Karnataka Vs. C.Nagarajaswamy among the others to the conclusion that the order of acquittal on the ground of acquittal recorded by setting aside by the High Court found fault by allowing the appeal setting aside the reversal order of the High Court saying sanction required.

20. In Nagarajaswamy supra it was held that when prior sanction by competent authority is provided by statutory provision which is a sine-qua-non for taking cognizance, ordinarily the question to be dealt with is at the stage of taking cognizance. Even cognizance taken erroneously, once the same comes to the notice of the Court at a later stage finding to that effect is to be given by the Court. The accused is entitled to take such plea or sanction required at any point of time including even in hearing the appeal before the appellate Court. It was held that when all the mandatory requirements of the statutory formalities not complied with, practically cognizance cannot be taken by the Court and any cognizance taken is therefrom is unsustainable.

22. In further saying as held in Nagarajaswamy supra and State of Goa Vs. Babu Thomas for want of sanction the Court taking cognizance is incompetent and that error was so fundamental that invalidated the proceedings conducted by trial Court by relegating the parties to apposition where the competent authorities could issue on appropriate order sanctioning the prosecution. In another expression D.T.Virupakshappa Vs.C.Subhash referring to Kumar Raghavendra Singh Vs. Ganesh Chandra Jew of protection u/sec.197 Cr.P.C. is to protect responsible public servant against the institution of possibly vexatious criminal proceedings for the offences alleged to have been committed by them while they are acting or purporting to act as public servants. If in doing his official duty he

even acted in excess of a duty when there is reasonable connection between the act and performance of duty, the excess will not be sufficient ground to deprive the protection to the public servant and it was observed ultimately when police allegedly exceeding in exercise of his power in alleging while investigating he assailed the complainant and detained him in police station, said offence committed is when reasonably connected with the performance of the official duty previous sanction is mandatory and the proceedings thereby followed vitiated in quashing the proceedings.”

13. Coming to the decision placed reliance by the complainant in **Surinderjit Singh Mand and another v. State of Punjab**³ on the requirement of sanction or not for illegal detention for 4 days which is beyond what is provided by Section 57 Cr.P.C. by maximum 24 hours excluding journey time cannot be kept with place after arrest to produce before the Magistrate. Here within 24 hours the defacto complainant was produced before the Magistrate undisputedly thereby there is no illegal detention and the principle laid down therein as no application to the facts as it is also laid down therein that whether sanction required or not to be decided with reference to the attended facts of each case.

14. In fact as referred supra, it is the SHO III Town PS that registered the crime, arrested the accused and produced with remand report before the Magistrate and the Magistrate

³ 2016 (8) SCC 722

sent him to jail and the jail authorities with police escort that could sent to hospital as accused practically in judicial custody and while under custody judicial control can be with jail authorities and no direct role of police, but for to provide escort and keep in watch while under treatment at Hospital. Before sending back to jail having taken from jail and that too there is no any written instructions from the Inspector from the material on record for handcuffing to rope A.2 for that.

15. Having regard to the above and in the result, both the Criminal Petitions are allowed by quashing the proceedings against A.1 and A.2 SC ST CC.No.29 of 2016 on the file of Special Judge for ST and SC Cases-cum-VI Additional District & Sessions Judge, Kurnool, and the accused are acquitted and the bail bonds of the accused, if any, shall stand cancelled.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 31.12.2018
ska