

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1183 of 2019

And

Crl.M.P.No.15720 of 2019

K.P.Ramanathan

... Petitioner

Vs.

State rep by  
Inspector of Police,  
CBI/ACB/Chennai.  
(RC.MA1 2011A0018)

... Respondent

Prayer:

Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the order dated 18.10.2019 passed in Crl.M.P.8147/2015 by Learned XIII Additional Special Judge for CBI Cases.

For Petitioner : Mr.Sunder Mohan

For Respondent : Mr.K.Srinivasan  
Special Public Prosecutor  
for CBI Cases

O R D E R

This criminal revision has been filed seeking to set aside the order dated 18.10.2019 passed in Crl.M.P.No.8147 of 2015 by the learned XIII Additional Special Judge for CBI Cases.

2.The petitioner along with the other accused is alleged to have entered into conspiracy and cheated the Chennai Port Trust, Government of India in the matter of award of Work Order to M/s.Chettinad Logistics Private Limited for installation of semi-mechanized coal handling/ closed conveyor system at Chennai Port and its operation and maintenance, including a bubble structure and caused loss to the tune of Rs.51.44 Crores. Thereafter, CBI took up the investigation and filed charge sheet for the offence under Sections 120-B read with 420 IPC and

Section 13 (2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and the same was taken on file by the learned XIII Additional Special Judge in C.C.No.25 of 2015.

3. According to the petitioner, the charge sheet filed by the prosecution did not reveal any prima facie case against him and hence, the petitioner filed petition in CrI.M.P.No.8147 of 2015 under Section 239 of Cr.P.C., seeking to discharge him from the charges. The said petition was dismissed. Hence, the petitioner has filed this criminal revision.

4. The learned counsel appearing for the petitioner would submit that the petitioner is a public servant who worked as Chief Mechanical Engineer, Chennai Port Trust and retired from service on 31.05.2010. He would further submit that for taking cognizance of an offence said to have been committed by a public servant, previous sanction is necessary under Section 197 of Cr.P.C. He would further submit that though the prosecution obtained previous sanction in respect of A1, no previous sanction was obtained in the case of the petitioner/A2.

5. The learned counsel appearing for the petitioner would further submit that the petitioner acted along with A1 during the course of his official capacity and extended the time limit prescribed in the contract for completing the work. When the prosecution obtained previous sanction in respect of A1 and not obtained previous sanction in respect of A2/ petitioner, it vitiates the entire prosecution case. Hence, the petitioner is entitled for discharge under Section 239 of Cr.P.C.

6. The learned counsel appearing for the petitioner further draws the attention of this Court to the statement of L.W.21 and L.W.44 and would submit that even bare perusal of the statements would clearly indicate that the petitioner in his official act extended the benefit to the contractor and there is no other motive for him. He would further submit that the prosecution has to see the quality of the work done by the Officials who acted in a official manner, however, the Trial Court without considering the above said aspect simply dismissed the petition filed by the petitioner under Section 239 of Cr.P.C., seeking to discharge him from the charges, which is un-sustainable one.

7. In support of his contentions, the learned counsel appearing for the petitioner relied upon the following decisions of the Hon'ble Apex Court:

(i) Decision reported in (1996) 1 SCC 478 (R.Balakrishna Pillai Vs. State of Kerala and another), the relevant portion of which reads as follows:

"6.The next question is whether the offence alleged against the appellant can be said to have been committed by him while acting or purporting to act in the discharge of his official duty. It was contended by the learned counsel for the State that the charge of conspiracy would not attract Section 197 of the Code for the simple reason that it is no part of the duty of a Minister while discharging his official duties to enter into a criminal conspiracy. In support of his contention, he placed strong reliance on the decision of this Court in Harihar Prasad vs. The State of Bihar (1972 Cr1.L.J. 707 = 1972 (3) SCC 89). He drew our attention to the observations in paragraph 74 of the judgment where the Court, while considering the question whether the acts complained of were directly concerned with the official duties of the concerned public servants, observed that it was no duty of a public servant to enter into a criminal conspiracy and hence want of sanction under Section 197 of the Code was, no bar to the prosecution. The question whether the acts complained of had a direct nexus or relation with the discharge of official duties by the concerned public servant would depend on the facts of each case. There can be no general proposition that whenever there is a charge of criminal conspiracy levelled against a public servant in or out of office the bar of Section 197(1) of the Code would have no application. Such a view would render Section 197(1) of the Code specious. Therefore, the question would have to be examined in the facts of each case. The observations were made by the court in the special facts of that case which clearly indicated that the criminal conspiracy entered into by the three delinquent public servants had no relation whatsoever with their official duties and, therefore, the bar of Section 197(1) was not attracted. It must also be remembered that the said decision was rendered keeping in view Section 197(1), as it then stood, but we do not base our decision on that distinction. Our attention was next invited to a three-Judge decision in

B. Saha & Ors. vs. M.S. Kochar (1979 (4) SCC 177). The relevant observations relied upon are to be found in paragraph 17 of the judgment. It is pointed out that the words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed Section 197(1) of the code, are capable of both a narrow and a wide interpretation but their Lordships pointed out that if they were construed too narrowly, the section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". At the same time, if they were too widely construed, they will take under their umbrella every act constituting an offence committed in the course of the same transaction in which the official duty is performed or is purported to be performed. The right approach, it was pointed out, was to see that the meaning of this expression lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection. Only an act constituting an offence directly or reasonably connected with his official duty will require sanction for prosecution. To put it briefly, it is the quality of the act that is important, and if it falls within the scope of the afore-quoted words, the protection of Section 197 will have to be extended to the concerned public servant. This decision, therefore, points out what approach the Court should adopt while construing Section 197(1) of the Code and its application to the facts of the case on hand.

7. In the present case, the appellant is charged with having entered into a criminal conspiracy with the co-accused while functioning as a Minister. The criminal conspiracy alleged is that he sold electricity to an industry in the State of Karnataka 'without the consent of the Government of Kerala which is an illegal act'

under the provisions of the Electricity (Supply) Act, 1948 and the Kerala Electricity Board Rules framed thereunder. The allegation is that he in pursuance of the said alleged conspiracy abused his official position and illegally sold certain units to the private industry in Bangalore (Karnataka) which profited the private industry to the tune of Rs.19,58,630.40 or more and it is, therefore, obvious that the criminal conspiracy alleged against the appellant is that while functioning as the Minister for Electricity he without the consent of the Government of Kerala supplied certain units of electricity to a private industry in Karnataka. Obviously, he did this in the discharge of his duties as a Minister. The allegation is that it was an illegal act inasmuch as the consent of the Government of Kerala was not obtained before this arrangement was entered into and the supply was effected. For that reason, it is said that he had committed an illegality and hence he was liable to be punished for criminal conspiracy under Section 120-B, I.P.C. It is, therefore, clear from the charge that the act alleged is directly and reasonably connected with his official duty as a Minister and would, therefore, attract the protection of Section 197(1) of the Act."

(ii) Decision reported in (2014) 16 SCC 807 (State of Punjab Vs. Labh Singh), the relevant portion of which reads as follows:

"10. However as regards charges for the offences punishable under the Penal Code, the High Court was absolutely right in setting aside the order of the Special Judge. Unlike Section 19 of the PC Act, the protection under Section 197 CrPC is available to the public servant concerned even after retirement. Therefore, if the matter was considered by the sanctioning authority and the sanction to prosecute was rejected first on 13.9.2000 and secondly on 24.9.2003, the Court could not have taken cognizance insofar as the offences

punishable under the Penal code are concerned. As laid down by this Court in State of H.P. v. Nishant Sareen, the recourse in such cases is either to challenge the order of the sanctioning authority or to approach it again if there is any fresh material."

(iii) Decision reported in (2016) 6 SCC 734 (Amal Kumar Jha Vs. State of Chhattisgarh and another), the relevant portion of which reads as follows:

"10. In State of Orissa v. Ganesh Chandra Jew this Court has laid down that protection under Section 197 CrPC would be available only when the act done by the public servant is reasonably connected with the discharge of his official duty. This Court has laid down thus: (SCC pp.46-47, para 7)

"7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but

whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

13. In State of M.P. V. Sheetla Sahai, this Court has laid down thus: (SCC pp.642-44, paras 59-60)

"For the purpose of attracting the provisions of Section 197 of the Code of Criminal Procedure, it is not necessary that they must act in their official capacity but even where a public servant purports to act

in their official capacity, the same would attract the provisions of Section 197 of the Code of Criminal Procedure. It was so held by this Court in *Sankaran Moitra v. Sadhna Das and Another* [(2006) 4 SCC 584]. The question came up for consideration before this Court in *Matajog Dobey v. H.C. Bhari* [AIR 1956 SC 44 : 1955 (2) SCR 925] wherein it was held:

"17. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". But the difference is only in language and not in substance.

The offence alleged to have been committed must have something to do, or must be related in some manner with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits.

What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation. In *Hori Barn Singh v. Crown Sulaiman, J.* observes:

"The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction."

The interpretation that found favour with Varadachariar, J. in the same case is stated by him in these terms at p. 187:

"There must be something in the nature of the act complained of that attaches it to the official character of the person doing it."

In affirming this view, the Judicial Committee of the Privy Council observe in Gill case:

"A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty ... The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office."

Hori Ram case is referred to with approval in the later case of Lieutenant Hector Thomas Huntley v. King Emperor but the test laid down that it must be established that the act complained of was an official act appears to us unduly to narrow down the scope of the protection afforded by Section 197 of the Criminal Procedure Code as defined and understood in the earlier case. The decision in Albert West Meads v. R does not carry us

any further; it adopts the reasoning in Gill's case."

6.The said principle has been reiterated by this Court in B. Saha v. M.S. Kochar [(1979) 4 SCC 177] in the following terms:

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

"16. .... It is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted".

18.In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or

omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him."

8.Per contra, the learned Special Public Prosecutor for CBI Cases would submit that though some of the acts of the petitioner are official duty, other acts are not official duty. The petitioner is a retired employee and hence there is no necessity to obtain permission under Section 19 of the Prevention of Corruption Act, however, even after retirement, if the act relates to public duty, necessarily previous sanction has to be obtained under Section 197 of Cr.P.C.

9.The learned Special Public Prosecutor for CBI Cases would further submit that the allegation against the petitioner is that the petitioner along with A1 awarded work order for installation of semi-mechanized coal handling/ closed conveyor system at Chennai Port and its operation and maintenance, including a bubble structure in favour of M/s.Chettinad Logistics Private Limited/ A3 represented by its Chief Executive (A4) without obtaining the approval from Ministry of Shipping, Government of India. A1 and A2 with dishonest intention, permitted the Company/ Contractor to work beyond the contract period without obtaining the approval from the Trust Board and non-recovery of liquidated damages, while releasing the instalments and payment before erecting the bubble structure and caused wrongful loss of Rs.6,86,16,598/- to the Chennai Port.

10.The learned Special Public Prosecutor for CBI Cases would further submit that the period of completion of the work was fixed as six months, however, A1 and A2/petitioner with dishonest intention, allowed the Contractor to complete the work after a lapse of 20 months from the stipulated date, without initiation of any penal action for termination of the contract invoking the terms of contractual agreement, thereby granted extension of time.

11.The learned Special Public Prosecutor for CBI Cases would further submit that the petitioner/A2 recommended not to recover the liquidated damages on each running/ instalment bills and to release payments to the Contractor till the final payment, despite inordinate delay in execution of work and shortage of length of the conveyor belt thereby fraudulently deceived the

Port Trust to part with money which the Port Trust would not have paid if not so deceived.

12.The learned Special Public Prosecutor for CBI Cases would further submit that as per the work order, the length of the conveyor belt was 4965 meters, however, the conveyor belt installed was in a shortage of 426.25 meters thereby caused wrongful loss to the Chennai Port Trust and A1 and A2 kept for themselves the pecuniary advantage of Rs.15,16,597.50, the value of 426.25 meters.

13.The learned Special Public Prosecutor for CBI Cases would further submit that in the present case, the petitioner acted along with A1 and caused loss to the Port Trust to the tune of Rs.51.44 Crores. Some of the acts of the petitioner are official duty and some of the acts of the petitioner are not official duty. He would further submit that merely because prosecution obtained previous sanction in respect of A1, it cannot be said that previous sanction has to be obtained in respect of A2/ petitioner.

14.The learned Special Public Prosecutor for CBI Cases would further submit that Three Judges Bench of the Hon'ble Apex Court has considered similar issue in the decision reported in 2019 SCC OnLine SC 1555 (Station House Officer, CBI/ACB/Bangalore Vs. B.A.Srinivasan and another).

15.Heard the arguments advanced on either side and perused the materials available on record.

16.The allegation against the petitioner/ A2 is that the petitioner along with A1 awarded work order for installation of semi-mechanized coal handling/ closed conveyor system at Chennai Port and its operation and maintenance, including a bubble structure in favour of M/s.Chettinad Logistics Private Limited/ A3 represented by its Chief Executive (A4) without obtaining approval from the Ministry of Shipping, Government of India.

17.The petitioner along with A1, with dishonest intention, permitted the Company/ Contractor to work beyond the contract period without obtaining the approval from the Trust Board and allowed the Contractor to complete the work after a lapse of 20 months from the stipulated date.

18.The petitioner recommended not to recover the liquidated damages on each running/ instalment bills and to release payments to the Contractor till the final payment, despite inordinate delay in execution of work and shortage of length of the conveyor belt thereby fraudulently deceived the Port Trust to part with money which the Port Trust would not have paid if not so deceived. The petitioner acted along with A1 and caused loss to the Port Trust to the tune of Rs.51.44 Crores.

19.Though several allegations are made against the petitioner/ A2, all those allegations are factual issues which can be decided only at the time of trial. However, the learned counsel appearing for the petitioner urged this Court whether obtaining previous sanction under Section 197 of Cr.P.C., in respect of A1 and not obtaining previous sanction under Section 197 of Cr.P.C., in respect of A2 vitiates the prosecution case or not.

20.Admittedly, petitioner is a public servant who worked as Chief Mechanical Engineer, Chennai Port Trust and retired from service on 31.05.2010 and no previous sanction under Section 197 of Cr.P.C. was obtained in respect of the petitioner/A2. The very same issue came up for consideration before the Hon'ble Apex Court very recently and the Hon'ble Apex Court in the decision reported in 2019 SCC OnLine SC 1555 (Station House Officer, CBI/ACB/Bangalore Vs. B.A.Srinivasan and another), dealt with the parameters ought to be considered while entertaining an application under Section 482 of the Code and observed that the decision in Anil Kumar Bose vs. State of Bihar pertained to a case which had arisen after a full fledged trial, where, as regards offence punishable under Section 420/34 IPC, wherein, it was observed that the essential ingredient being mens rea, mere failure on part of the concerned employees to perform their duties or to observe the rules/procedure may be administrative lapses but could not be said to be enough to attract the penal provisions under Section 420 IPC.

21.It is useful to extract hereunder the relevant portions of the decision reported in 2019 SCC OnLine SC 1555 (Station House Officer, CBI/ACB/Bangalore Vs. B.A.Srinivasan and another):

"16.Consequently, there was no occasion or reason to entertain any application seeking discharge in respect of offences punishable under

the Act, on the ground of absence of any sanction under Section 19 of the Act. The High Court was also not justified in observing 'that the protection available to a public servant while in service, should also be available after his retirement'. That statement is completely inconsistent with the law laid down by this Court in connection with requirement of sanction under Section 19 of the Act.

17. Again, it has consistently been laid down that the protection under Section 197 of the Code is available to the public servants when an offence is said to have been committed 'while acting or purporting to act in discharge of their official duty', but where the acts are performed using the office as a mere cloak for unlawful gains, such acts are not protected. The statements of law in some of the earlier decisions were culled out by this Court in *Inspector of Police and another vs. Battenapatla Venkata Ratnam* as under:-

"7. No doubt, while the respondents indulged in the alleged criminal conduct, they had been working as public servants. The question is not whether they were in service or on duty or not but whether the alleged offences have been committed by them "while acting or purporting to act in discharge of their official duty". That question is no more res integra. In *Shambhoo Nath Misra v. State of U.P.*, at para 5, this Court held that: (SCC p. 328)

"5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund, etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds, etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to

fabricate the record or misappropriate the public fund, etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained."

8. In *Parkash Singh Badal v. State of Punjab*, at para 20 this Court held that: (SCC pp. 22-23)

"20. The principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant's own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity."

and thereafter, at para 38, it was further held that: (*Parkash Singh Badal case*, SCC p. 32)

"38. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage."

9. In a recent decision in *Rajib Ranjan v. R. Vijaykumar* at para 18, this Court has taken the view that: (SCC p. 521)

"18. ... even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted."

(emphasis already supplied)

18. It has also been observed by this Court that, at times, the issue whether the alleged act is intricately connected with the discharge of official functions and whether the matter would come within the expression 'while acting or purporting to act in discharge of their official duty', would get crystalized only after evidence is led and the issue of sanction can be agitated at a later stage as well. In P.K. Pradhan vs. State of Sikkim represented by the Central Bureau of Investigation, this Court stated:-

"15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of

the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

(underlined by us)

19. The offences involved in the case of N.K. Ganguly were under Section 120-B IPC read with Sections 13(1)(d) and 13(2) of the Act i.e. relating to conspiracy to commit offences punishable under the provisions of the Act. Secondly, the conclusion was drawn in the context of the facts available therein which is evident from the following:—

"35. From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate Government under Section 197 CrPC, it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to examine the allegations contained in the final report against the appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate Government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegations made against the appellants in

the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence."

(underlined by us)

20. We now turn to the cases relied upon by Mrs. V. Mohana, learned Senior Advocate. In *Rishipal Singh vs. State of Uttar Pradesh* this Court observed:-

"13. What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the court can exercise the power under Section 482 CrPC. While exercising the power under the provision, the courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial court and dwell into the disputed questions of fact."

21. This decision thus dealt with the parameters which ought to be considered while entertaining an application under Section 482 of the Code and is not a decision directly on the

point. The decision in Anil Kumar Bose vs. State of Bihar pertained to a case which had arisen after a full fledged trial, where, as regards offence punishable under Section 420/34 IPC, it was observed that the essential ingredient being mens rea, mere failure on part of the concerned employees to perform their duties or to observe the rules/procedure may be administrative lapses but could not be said to be enough to attract the penal provisions under Section 420 IPC. The matter was considered after the facts had crystalized in the form of evidence before the court and as such, this decision is of no relevance for the present purposes."

22. In view of all the above discussions and decisions, this Court is not inclined to interfere with the order dated 18.10.2019 passed in Crl.M.P.No.8147 of 2015 by the learned XIII Additional Special Judge for CBI Cases. All the issues raised are triable issues which cannot be discussed in the discharge petition or in the revision. However, it is made clear that this Court has not expressed any opinion on the merits of the case. The facts discussed in this order is only for deciding the revision. The learned XIII Additional Special Judge for CBI Cases shall proceed with the case in C.C.No.25 of 2015, without being influenced by any of the observations made in this order and shall decide the matter independently, based on the records and in accordance with law.

23. This criminal revision is accordingly dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

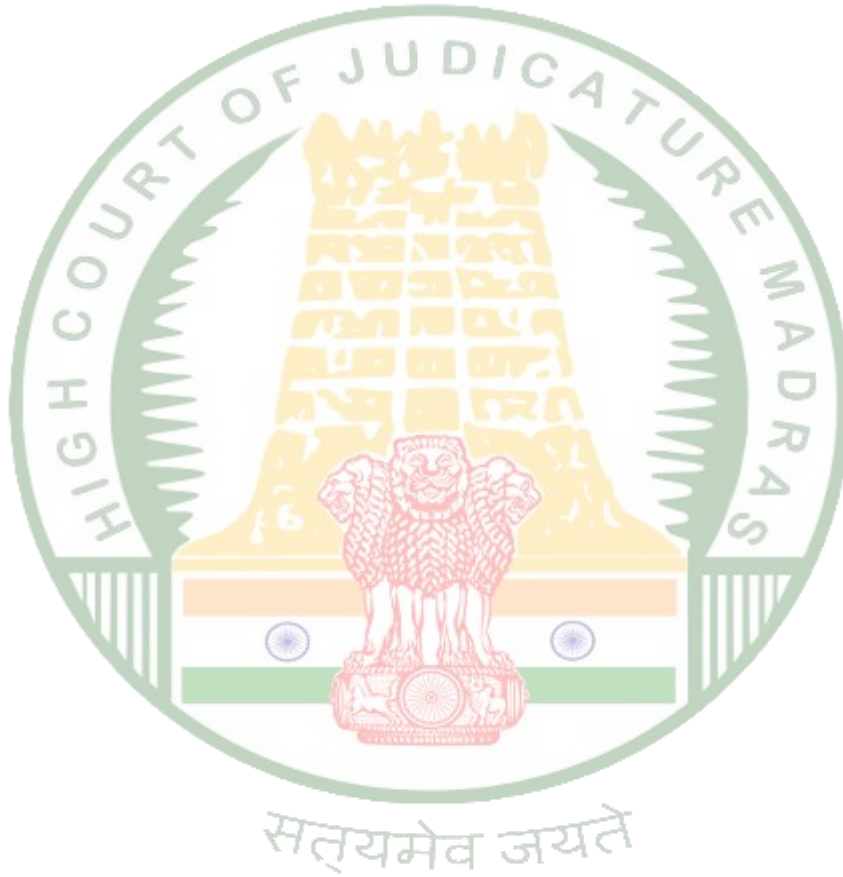
1. The XIII Additional Special Judge for CBI Cases.

2.The Inspector of Police,  
CBI/ACB/Chennai.

+lcc to Mr.Sunder Mohan, Advocate sr.102390

Crl.R.C.No.1183 of 2019  
And  
Crl.M.P.No.15720 of 2019

rsv(co)  
nr 30/01/2020



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