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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2022

PRONOUNCED ON : 26.05.2022

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THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

Crl.R.C.Nos.160, 162 & 163 of 2021
and Crl.M.P.Nos.3358, 3360 & 3361 of 2021

In all Crl.R.C.'s:-

Andasu Ravinder ...Petitioner/Accused No.1

Vs.

The State represented by,
Superintendent of Police,
CBI, Chennai. ...Respondent/Complainant

Prayer in Crl.R.C.No.160 of 2021 :- Criminal Revision Petition is filed under Section 397 r/w. 401 of Code of Criminal Procedure, to set aside the order in Crl.M.P.No.4844 of 2020 dated 16.02.2021 in C.C.No.7 of 2015 on the file of the XII Additional Special Court for C.B.I. cases at Chennai and discharge the accused from the above C.C.No.7 of 2015 and allow the revision petition.

Prayer in Crl.R.C.No.162 of 2021 :- Criminal Revision Petition is filed under Section 397 r/w. 401 of Code of Criminal Procedure, to set aside the order in Crl.M.P.No.4842 of 2020 dated 16.02.2021 in C.C.No.6 of 2015 on the file of the XII Additional Special Court for C.B.I. cases at Chennai and discharge the accused from the above C.C.No.6 of 2015 and allow the revision petition.

Prayer in Crl.R.C.No.163 of 2021 :- Criminal Revision Petition is filed under Section 397 r/w. 401 of Code of Criminal Procedure, to set aside the order in Crl.M.P.No.4837 of 2020 dated 16.02.2021 in C.C.No.5 of 2015 on the file of the XII Additional Special Court for C.B.I. cases at Chennai and discharge the accused from the above C.C.No.5 of 2015 and allow the revision petition.



In all Crl.R.C.'s:-

For Petitioner : Mr.N.Baaskaran.

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor
High Court of Madras.

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ORDER

Crl.R.C.No.160 of 2021 is filed challenging the order passed by the XII Additional Special Court for C.B.I. cases, Chennai, in Crl.M.P.No.4844 of 2020 in C.C.No.7 of 2015.

2.Crl.R.C.No.162 of 2021 is filed challenging the order passed by the XII Additional Special Court for C.B.I. cases, Chennai, in Crl.M.P.No.4842 of 2020 in C.C.No.6 of 2015.

3.Crl.R.C.No.163 of 2021 is filed challenging the order passed by the XII Additional Special Court for C.B.I. cases, Chennai, in Crl.M.P.No.4837 of 2020 in C.C.No.5 of 2015.

4.Final report in C.C.No.5 of 2015 reads that, C.B.I, Anti Corruption Branch registered a case in R.C.No.5(A)/2012 on 20.02.2012 under Section 109 I.P.C and under Section 13 (1) (e) of the Prevention of Corruption Act, 1988, against petitioner Shri.Andasu Ravindar, Additional Commissioner, office of the Chief Commissioner of Income Tax, Chennai, and his wife Smt.Kavitha. During the course of investigation, it is ascertained that Shri.Andasu Ravindar in collusion with other accused persons namely B.R.Mahesh, B.A.Chaitanya, Director of M/s.Sri Raviteja Trading Pvt Ltd, Hyderabad, Uttam Chand Bohra, Uday K Agarwal and Pothapragada Srinivas, during the period from 01.01.2005 to 29.08.2011 amassed wealth in his name and in the name of his wife Smt.Kavitha which are disproportionate to the known sources of income to Shri.Andasu Ravindar and his wife totaling to the tune of Rs.2,32,20,296/- which he cannot satisfactorily account for. Therefore, final report was filed against the accused for the offences punishable under Section 120-B I.P.C r/w 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act, 1988 and under Section 109 I.P.C.

5.Final report in C.C.No.6 of 2015 reads that while Shri.Andasu Ravindar was working as Additional Commissioner of Income Tax, Company Range - I, Chennai, in 2011, C.B.I. ACB, Chennai has registered a case in R.C.No.33(A)2011 on 29.08.2011



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under Section 120 (B) I.P.C and Section 7 of the Prevention of Corruption Act, 1988, against him for demand of illegal gratification of Rs.50,00,000/-. During the search at various places including the residence of Shri.Andasu Ravindar and residence cum official premises of Shri.Uttam Chand Bhora incriminating documents were seized. An Original sale deed for Rs.80,00,000/- executed in favour of M/s.Sri Raviteja Trading Company Pvt Ltd., Hyderabad, was seized from residence cum official premises of Shri.Uttam Chand Bhora. It revealed that Shri.Andasu Ravindar, ordered to conduct survey of the office premises of M/s.A.S. Shipping agency private limited, Chennai. During the survey, violations of various provisions of Income Tax Act, totaling Rs.18 crores by M/s.A.S. Shipping Agencies was found. Post survey Shri.Andasu Ravindar asked his friend Shri.Pothapragada Srinivas, Director of M/s.Tidal Data solutions, Bangalore, to visit the office of M/s.A.S. Shipping private limited, Chennai. Accordingly, he visited and obtained purchase order for the supply of Unified Storage Server system through M/s.Utkarsh Infotech Pvt Ltd., for a sum of Rs.56,71,750/-. Material was supplied to M/s.A.S. Shipping Agencies Private Limited, Chennai, and payment was made through Cheques to M/s.Utkarsh Infotech Private Limited. Shri.Andasu Ravindar entered into criminal conspiracy with Shri.Atul Agarwal, Managing Director of M/s.A.S. Shipping Agencies Private limited, Chennai and Shri.Pothapragada Srinivas, an amount of Rs.54,04,700/- as bribe was paid through cheques by M/s.A.S. Shipping Agencies, in the name of M/s.Utkarsh Infotech Pvt Ltd., and M/s.Utkarsh Staffing Pvt Ltd., Hyderabad, in the guise of service charges. The cheques were collected by Shri.Pothapragada Srinivas, on behalf of Shri.Andasu Ravindar and deposited in the said companies current account. On the directions of Shri.Andasu Ravindar, Shri.Pothapragada Srinivas, in collusion with Shri.Uday K.Agarwal, the amounts were transferred to the current account of M/s.Shri Raviteja Trading Pvt Ltd., Hyderabad. The purchase of flat No.4/3, (Old No.28/3 measuring 2108 sqft in second floor at Al-Ahad apartment, No.28, (Present No.4) Nageswara Rao Road (Old No.13, Krishnamachari Road) Nungambakkam, Chennai-34 was negotiated by Shri.Andasu Ravindar for Rs.80,00,000/-. The sale deed was registered in the name of M/s.Raviteja Trading Company Pvt Ltd. The property was purchased benami, in the name of M/s. Raviteja Trading Company Pvt Ltd., through the funds arranged by Shri.Andasu Ravindar. Sum of Rs.87,10,400/- includes the amount of Rs.54,04,700/-, received as service charges from M/s.A.S. Shipping Agencies Pvt Ltd., and routed out through the current account M/s.Utkarsh Infotech Pvt Ltd., and M/s.Utkarsh Staffing Pvt. Ltd, Secunderabad. Thus, accused Andasu Ravindar and other accused aforesaid committed



the offences punishable under Sections 120-B I.P.C, Section 7, 12 and 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988.

6.Final report in C.C.No.7 of 2015 reads as follows, while Shri.Andasu Ravindar, who was working as additional Commissioner of Income Tax, Company Circle Range-I, Chennai in 2011, C.B.I Anti Corruption Branch, Chennai has registered a case in R.C.No.33(A)/2011 on 29.08.2011 under Section 120-B I.P.C and Section 7 of the Prevention of Corruption Act, 1988, for demand of illegal gratification of Rs.50,00,000/-. During the search, original sale deed for Rs.80,00,000/- in favour of M/s.Sri Raviteja Trading Company Pvt Ltd., Hyderabad, was seized from Shri.Uttam Chand Bhora's residence and at official premises. Shri.Andasu Ravindar had official dealings with M/s.Aban Offshore Ltd, Chennai and processed Income Tax Returns filed by the company for the assessment year 2007 and 2008. During the process, he directed his friend Shri.Pothapragada Srinivas, Director of M/s.Tidal Data Solutions Private limited, Bangalore, to meet Vice President of M/s.Aban Offshore Ltd., Chennai, for getting a lead for sales order on commission basis and also instructed him to receive the gratification from M/s.Aban Offshore Ltd., in the name of service charge to Shri.Andasu Ravindar and that the revenue should go to M/s.Raviteja Trading Private Limited. M/s.Aban Offshore Ltd., was unable to provide any evidence to show that supply order was placed with M/s.Utkarsh Infotech Private Limited through Shri.Pothapragada Srinivas for the supply of Unified Storage Server, but a sum of Rs.56,16,662/- was paid through cheques in favour of M/s.Utkarsh Infotech Private Limited. On the directions of Pothapragada Srinivas, this amount was transferred to the current account of M/s.Raviteja Trading Company Private Ltd. The sale of property at plot No.4/3, second floor, Al-Ahad Apartment was negotiated by Shri.Andasu Ravindar for Rs.80,00,000/-. Sale deed was executed in the name of M/s.Shri Raviteja Trading Company Private Ltd. M/s.Shri Raviteja Trading Company Private Ltd, paid Rs.87,10,400/- towards the cost of purchase of Unified Storage Server and the same was obtained as bribe by Shri.Andasu Ravindar. Thus, Shri.Andasu Ravinder and other accused committed the offences punishable under Sections 120-B I.P.C. and Section 11 and 12 of the Prevention of Corruption Act, 1988.

7.Andasu Ravinder is the first accused in C.C.No.5 of 2015, C.C.No.6 of 2015 and C.C.No.7 of 2015. He filed CrI.M.P.No.4837 of 2020 in C.C.No.5 of 2015, CrI.M.P.No.4842 of 2020 in C.C.No.6 of 2015 and CrI.M.P.No.4844 of 2020 in C.C.No.7



of 2015 under Section 239 Cr.P.C. for discharging from the cases pending against him. The main ground taken by the petitioner in these discharge petitions is that final report is filed against petitioner for the offence under Section 120B I.P.C. r/w 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act and Section 109 I.P.C in C.C.No.5 of 2015, under Section 120 B I.P.C and Section 7, 12 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act in C.C.No.6 of 2015 and under Section 120 B I.P.C and Section 11 and 12 of the Prevention of Corruption Act in C.C.No.7 of 2015. For launching prosecution against public servant under I.P.C offences committed by him, while discharging his official duty, the sanction under Section 197 Cr.P.C. is mandatory. In the case before hand, the prosecution obtained the sanction under Section 19 of the Prevention of Corruption Act for the alleged misconduct and the abuse of power of the petitioner while he was discharging his official duty. However, no sanction was obtained by the prosecution for the offences under Indian Penal Code. Failure to obtain sanction under Section 197 Cr.P.C. for the offence under Section 120B I.P.C is a clear violation and bad in law and it vitiates the entire proceedings. Therefore, petition was filed to discharge the petitioner for want of valid sanction under Section 197 Cr.P.C.

8.This petition was opposed by the respondent alleging that the protection under Section 197 Cr.P.C. given only with a view to safeguard the public servants from frivolous and malicious prosecution for the acts of commission/omission during the course of discharge of their public duties. Only if the act is reasonably connected with the discharge of his official duty, the protection under Section 197 is available and this protection is not a mere cloak of doing objectionable offensive act. The prosecution has made out clear case for prosecution against the petitioner for the offence alleged in the final report. Sanction under Section 197 of Cr.P.C. is not required in the facts and circumstances of this case.

9.The trial Court dismissed the discharge petitions. Challenging the orders passed in CrI.M.P.No.4844 of 2020 in C.C.No.7 of 2015, CrI.M.P.No.4842 of 2020 in C.C.No.6 of 2015, CrI.M.P.No.4837 of 2020 in C.C.No.5 of 2015, CrI.R.C.Nos.160 of 2021, 162 of 2021 and 163 of 2021 respectively have been filed.

10.Learned counsel for the petitioner submitted that the sanction under Section 197 of Cr.P.C. is necessary for prosecuting of public servant for the offence committed under Indian Penal Code. Petitioner in this case is charged along with



offence under Prevention of Corruption Act, 1988, for the offence under Section 120B and 109 I.P.C. Admittedly, the prosecution has not obtained sanction under Section 197 Cr.P.C. for prosecuting the petitioner for the offence under Section 120B, 109 I.P.C. Failure to obtain sanction for prosecuting the petitioner under Section 120B and 109 I.P.C, especially, under Section 120B Indian Penal Code is illegal and against the well established dictum laid down by Hon'ble Supreme Court. It is also submitted that the survey concerned in this case was conducted by another officer. Petitioner was only a supervisor and he had no nexus whatsoever with the survey and passing of assessment order. The question of lack of sanction under Section 197 I.P.C can be taken at any time during a criminal proceedings, not necessarily at the time of taking cognizance or at the time of framing charges. Dismissal of the petition filed by petitioner before the trial Court is not in accordance with law and therefore, the order of the learned XII Additional Special Judge for CBI cases, Chennai, in discharge petitions have to be set aside and the discharge petitions have to be allowed relieving the petitioner ordeal of facing the trial.

11.The learned counsel for the petitioner relied on the judgments reported in 1)(2005) 4 Supreme Court Cases 512 K.Kalimuthu Vs. State by DSP, 2) (2015) 14 Supreme Court Cases 186 Nanjappa Vs. State of Karnataka, 3) (2016) 2 Supreme Court Cases 143 N.K.Gangully Vs. Central Bureau of Investigation, New Delhi, 4) (2016) 13 Supreme Court Cases 44 Punjab State Warehousing Corporation Vs. Bhushan Chander and Another, 5) (2019) 3 MLJ (CRL) 38 L.Thiruvengada Murthy Vs. CBI Special Crimes in support of his submissions.

12.In response, learned Special Public Prosecutor appearing for CBI cases, submitted that the offence committed by petitioner is un-connected with the official duty and therefore, there is no question of obtaining sanction under Section 197 Cr.P.C for prosecuting him for offence under Indian Penal Code. The prosecution obtained sanction under Prevention of Corruption Act and that is sufficient compliance with regard to obtaining prior sanction for prosecuting a public servant, especially the petitioner for the offences committed by him. This petition is misconceived one. Trial Court ought not have entertained the discharge petitions at all. Even in the absence of the charge under Section 120B I.P.C, the charges under Prevention of Corruption Act against the petitioner still remain. The prosecution case has to be taken as true, on its face value. When that be the position and when the charges under the Prevention of Corruption Act cannot be quashed, how can



petitioner seek to discharge from the case for the reason that there is no sanction obtained under Section 197 Cr.P.C for the offence under Indian Penal Code. In CrI.R.C.No.160 of 2021, out of 17 witnesses, 16 witnesses had been examined, in CrI.R.C.No.162 of 2021, out of 18 witnesses, 16 witnesses had been examined, in CrI.R.C.No.163 of 2021, out of 77 witnesses 74 witnesses had been examined. Petitioner has chosen to file this petition at the fag end of the trial, only with an intention to delay the out come of the case. This cannot be encouraged and therefore, the learned Special Public Prosecutor for CBI cases prayed for confirming dismissal order passed in the discharge petitions by the trial Court and for the dismissal of these criminal revision cases.

13.Considered rival submissions and perused the records.

14.Points arises for consideration of this Court is as follows,

“Whether final report filed by the prosecution against the petitioner for the offences under Indian Penal Code and Prevention of Corruption Act without obtaining a specific sanction under Section 197 Cr.P.C. for prosecuting the petitioner for the offences under Indian Penal Code is in accordance with law? if not, whether petitioner is entitle for the discharge from these cases?”

15.It is not in dispute that a proper sanction was obtained by the prosecution under Section 19 of Prevention of Corruption Act, 1988, for prosecuting the petitioner. It is also admitted position that there is no specific sanction obtained under Section 197 Cr.P.C. for prosecuting the petitioner for the offence committed under Indian Penal Code. In the absence of specific sanction under Section 197 Cr.P.C. for I.P.C offences, whether the case can be continued is the moot question. Section 197 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



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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.

.....

16. Coming to the judgments relied by the counsel appearing for the parties on the requirement of sanction under Section 197 Cr.P.C, it is observed in (2005) 4 Supreme Court Cases 512 K.Kalimuthu Vs. State by DSP, that so far public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint, cannot be taken notice of.

15. 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 proceedings. The question whether sanction is necessary or not may have to be determined from stage to stage. Further, in cases where offences under the Act are concerned, the effect of Section 197, dealing with the question of prejudice has also to be noted.

17. The judgment reported in (2015) 14 Supreme Court Cases 186 Nanjappa Vs. State of Karnataka, deals with



sanction obtained under Prevention of Corruption Act 1988. The issue regarding obtaining sanction under 197 Cr.P.C was not an issue in this case. Therefore, this judgment is not relevant for the purpose of this case.

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18.The judgment reported in (1979) 4 SCC 177 B.Saha Vs. M.S.Kohar, was referred for the purpose of showing the question touching the need for a valid sanction under Section 197 Cr.P.C. need not be raised as soon as a complaint is lodged, but can be agitated at any stage of the proceedings.

19.In the judgment reported in (2016) 2 Supreme Court Cases 143 N.K.Gangully Vs. Central Bureau of Investigation, New Delhi, when a question arose as to whether the sanction of the Central Government is required to prosecute for an offence under Section 197 I.P.C., after referring to various judgments on the subject, it is observed that,

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 of 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 of CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence.

20.It is observed in (2016) 13 Supreme Court Cases 44 Punjab State Warehousing Corporation Vs. Bhushan Chander and Another,

20. A survey of the precedents makes it absolutely clear that there has to be reasonable connection between the omission or commission and the discharge of official



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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 and another*⁹ 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.*¹⁰, 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*¹¹, 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 case11, 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."

24.It is observed in judgment reported in 2020 7 SCC 695 D.Devaraja Vs. OWAIS SABEER HUSSAIN, that

70.To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.

71. If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate government is obtained under Section 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act.

25.The learned Special Public Prosecutor for CBI cases, placed before this Court the order passed by this Court in Crl.R.C.No.1663 of 2016 and Crl.M.P.No.13785 of 2016 Ramesh Gelli Vs. The Inspector of Police, Central Bureau of Investigation, Bank Securities & Fraud Cell, Bangalore. When a similar question arose as to whether a prosecution of a public servant without obtaining sanction under Section 197 Cr.P.C., After discussing the judgments on the issue, it is observed as follows,

19.Even for the sake of argument, if the petitioner should be considered as a 'public servant' for I.P.C offences also, the protection available under Section 197 I.P.C., is not available for the petitioner herein since, the conditions in-built in Section 197 Cr.P.C., which say a person removable from office save or by sanction to Government and the



act committed or purported to committed in discharge of official duty, does not attracts to the facts of the present case.

20. At this juncture, it is appropriate to extract the observation of the privy council in H.H.B Gill and Another v. The King (AIR 1948 Privy Council 128), where the privy council has said, thus:-

A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act: nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. 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.

26. In Crl.O.P.No.19967 of 2017 A.Venugopal Vs. The Inspector of Police, (V & AC), Salem, relied by the learned Special Public Prosecutor for CBI cases, it is observed that,

26. With the above guidelines of the supreme court on various context with reference to the relevant facts of those cases, the facts in the case in hand has to be looked at. The offence alleged against the petitioner is conspiracy to forge documents, make false entries and misappropriate public money. The allegation is based on materials which prima facie reveal that no summer ploughing was done, no tractor in exist bearing the said registration numbers and the beneficiaries shown in the records are not at all in existence. Does this act have any reasonable and rational nexus to the official duty, the answer of this court would be an emphatic NO.

27. When there is no reasonable and rational nexus to the discharge of official duty and the act done, the public servant cannot seek umberage under section 197 of the code. As a public servant for prosecuting him under the Prevention of Corruption Act, the mandatory requirement of sanction has been obtained under section 19 of the Prevention of corruption Act. For seeking protection under section 197 of the Code, the said public servant has to satisfy two conditions. Though, the first condition that he must be a public servant and sanction of the Government is required to remove him



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from service is satisfied, the second condition that the offence alleged to have been committed while acting or purporting to act in the discharge of his official duty is not satisfied. Hence, the petition on this score also fails.

27. From the survey of the judgments cited by the learned counsel appearing for the parties, following principles emerge,

1) Sanction under Section 197 Cr.P.C is mandatory, if the person satisfies two conditions,

i) the public servant should be a person appointed by the Government and

ii) the offence ought to have been committed while acting or purporting to act in the discharge of his official duty.

2) In (2016) 2 Supreme Court Cases 143 N.K. Ganguly Vs. Central Bureau of Investigation, New Delhi, after referring to several judgments of Hon'ble Supreme Court in AIR 1960 SC 266 K. Satwant Singh Vs. State of Punjab, (1979) 4 SCC 177 B. Saha Vs. M. S. Kohar, AIR 1955 SC 287 Shreekantiah Ramayya Munipalli Vs. State of Bombay, (2007) 1 SCC 1 Parkash Singh Badal Vs. Union of India, it was observed that for the purpose of obtaining previous sanction under Section 197 Cr.P.C., it is imperative that the alleged offence is committed in the discharge of official duty by the accused.

3. A public servant is not entitled to indulge in criminal activities.

4. When there is no reasonable and rational nexus to the discharge of official duty and the act done, the public servant cannot seek umbrage under section 197 of the code.

5. The act of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but where there is no reasonable connection between the act complained of and the performance of official duties, no sanction under Section 197 Cr.P.C would be required.

6. Where the acts are performed using the office as a mere cloak for unlawful gains, such acts are not protected.

7. Where a criminal act is performed under the colour of authority but in reality, the act is for the public servant's own pleasure or benefit, then such acts are not protected under the doctrine of State immunity.

8. Being the public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanor 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.



9. In a classic example in the judgment reported in 2004 8 SCC 31 S.K. Zutshi Vs. Bimal Debnath, it was observed as follows, for instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted.

10. In the judgment reported in (2001) 6 SCC 704 P.K. Pradhan Vs. State of Sikkim, it was held 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.

28. In the case before hand, charges against the petitioner is that he along with co accused and in conspiracy with each other alleged to have committed the offences narrated above.

The charges against the petitioner in CrI.R.C.No.160 of 2021 are for the offences punishable under Section 120 B I.P.C. and Section 11 and 12 of the Prevention of Corruption Act, 1988.

Charges against the petitioner in CrI.R.C.No.162 of 2021 are for the offences punishable under Section 120 B I.P.C. and Section 13 (2) r/w. 13 (1) (e) of the Prevention of Corruption Act, 1988.

Charges against the petitioner in CrI.R.C.No.163 of 2021 are for the offences punishable under Section 120 B I.P.C. and Section 7, 12 and 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988.

29. The offences complained of against the petitioner are criminal acts attracting punishment under prevention of Corruption Act with the aid of Sections 120 B and 109 I.P.C. Those criminal acts are not expected to be done by the petitioner in the course of his official duty as a public servant. In fact using his position as public servant, petitioner indulged in corrupt activities by getting pecuniary and other benefits. Since, the criminal acts alleged against the



petitioner are not part of his official duty, this Court is of the considered view that the sanction under Section 197 I.P.C. for prosecuting him under Indian Penal Code is not necessary, especially when there is a valid sanction obtained under Prevention of Corruption Act. This petition is filed at the fag end of trial. This Court finds that the trial Court has rightly dismissed the petitions and this Court finds no reason to interfere with the order of the trial Court. The order of the trial Court is confirmed and these Civil Revision Cases are dismissed. Thus, the point is answered against the petitioner.

30. In fine, order dated 16.02.2021 in Crl.M.P.No.4844 of 2020 in C.C.No.7 of 2015, in Crl.M.P.No.4842 of 2020 in C.C.No.6 of 2015, Crl.M.P.No.4837 of 2020 in C.C.No.5 of 2015 passed by the XII Additional Special Court for C.B.I. cases, Chennai, are confirmed. Accordingly, Civil Revision Cases in Crl.R.C.No.160 of 2021, Crl.R.C.No.162 of 2021, Crl.R.C.No.163 of 2021 are dismissed. Consequently, connected miscellaneous petitions stand closed.

SD/-

ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

- 1.The XII Additional Special Court for C.B.I. cases
Chennai.
- 2.The Superintendent of Police,
CBI, Chennai.
- 3.The Special Public Prosecutor(CBI Cases)
High Court of Madras.

Crl.R.C.Nos.160, 162 & 163 of 2021
and Crl.M.P.Nos.3358, 3360 & 3361 of 2021

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srg 10/06/2022