

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 112 OF 2018

WITH

INTERIM APPLICATION NO. 1252 OF 2021

Lt. Col. Prasad Purohit	]	
Age about 44 years, Occupation : Service,	]	
Resident of 76/21, Susmriti, Shantishila Society,	]	
Law College Road, Erandawana, Pune- 411 004.	]	... Appellant (Org. Accused No.9)

V/s.

1.	National Investigation Agency	]	
	Ministry of Home Affairs	]	
	Shastri Building, New Delhi	]	
2.	The State of Maharashtra	]	... Respondents

Dr.Neela Gokhale a/w. Mr.Sagar Bhandare, Mr.Viral Babar, Ms.Manjiri Parasnis & Mr.Malhar Kadam for Appellant.
 Mr.Sandesh Patil a/w. Mr.Chintan Shah for Respondent No.1-NIA.
 Mrs.S.D. Shinde, A.P.P. for Respondent No.2-State.
 Mr.Shahid Nadeem a/w. Ms.Kritika Agrawal, Mr.Qurban Hussain, Ms.Aafrin Khan i/b. Mr.Mateen Shaikh for Intervenor.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**

RESERVED ON : 29th November 2022.

PRONOUNCED ON : 2nd January 2023.

JUDGMENT (Per : A.S. Gadkari, J.)

1. By the present Appeal under Section 21(1) of National Investigation Agency Act, 2008, Appellant, Original Accused No.9, has

impugned Order dated 27th December 2017 passed below Exh.4247 and Exh.4689 in NIA Special Case No. 01 of 2016, by the learned Special Judge (Under MCOC & NIA Act), Greater Mumbai, rejecting his application under Section 227 of Criminal Procedure Code for discharge from the said crime.

2. Exhibit-4247 was filed by the Appellant under Section 227 of Cr.PC. read with Section 11 of MCOC Act for discharge under the provisions of MCOC Act and UAPA Act.

Exhibit-4698 was filed by the Appellant under Section 227 of Cr.PC. read with Section 197 of Cr.PC. for discharge under Section 302/307 of I.P.C. and Sections 3, 4, 5, 6 of the Explosives Act.

The Applications preferred by the Appellant have been partially allowed by the Trial Court by its impugned Order. Appellant has been discharged from the offences punishable under Sections 3(1)(i), 3(1)(ii), 3(2), 3(4), 3(5) of MCOC Act and from the offences punishable under Sections 17, 20 & 23 of UAP Act as well as for the offence punishable under Sections 3, 5 & 25 of Arms Act. The Trial Court has directed that, Charge be framed against the Appellant and accused Nos.1, 4 to 6, 10 & 11 for the offences as more specifically mentioned in para No.7 of the operative part of the impugned Order.

3. Heard Dr.Neela Gokhale, learned counsel for Appellant, Mr.Sandesh Patil, learned Special P. P. for Respondent No.1-NIA, Mrs.S.D. Shinde, learned A.P.P. for Respondent No.2-State and Mr.Shahid Nadeem,

learned Advocate for Intervenor. Perused Synopsis/List of Dates submitted by the learned counsel for Appellant and the Written Submissions submitted by the learned Advocate for Intervenor. Perused entire record produced before us.

4. At the outset, Dr. Neela Gokhale, learned counsel for Appellant submitted that, the Appellant is challenging the impugned Order only on the ground of requirement of 'Sanction' as contemplated under Section 197(2) of Cr.P.C. to prosecute him, as on the date of commission of alleged offence, he was a public servant and was performing his lawful duty in that behalf and to consider the case of the Appellant only on the point of 'Sanction' as required under Section 197 of Cr.P.C.. She therefore submitted that, the issue of 'Sanction' as contemplated under Section 197 of Cr.P.C. be decided in the present appeal.

5. It is to be noted here that, by an Order dated 21st August 2017, the Appellant was granted bail by the Hon'ble Supreme Court. By subsequent Order dated 20th April 2018 passed in Petition for Special Leave to Appeal (Crl.) Nos.611-613 of 2018, the Hon'ble Supreme Court ordered that, the observations made by it in the Order deciding the bail application shall not be totally brushed aside, but shall be considered during framing of charge and the Trial Court and the High Court shall decide the same on its own merits without being influenced by the observations in respect of sanctions in para No.19 of the Order dated 21st August 2017.

6. We have accordingly heard learned counsel for the Appellant at length on the point whether the 'Sanction' under Section 197(2) of Cr.P.C. is necessary or not to prosecute the Appellant.

7. As per the Second Supplementary Report submitted by the Respondent No.1-NIA before the Trial Court, it is the case of the prosecution that :-

(i) On 29th September 2008, at about 21.35 hours, a bomb explosion occurred opposite Shakeel Goods Transport Company, between Anjuman Chowk and Bhiku Chowk at Malegaon. The blast took place by an improvised explosive device fitted in a LML Freedom motorcycle bearing registration number MH-15/P-4572. In the said bomb explosion, six persons were killed and about 101 persons received serious to grievous injuries. There was also loss of public property in the vicinity. Since, it was the month of 'Holy Ramzan' and on 30th September 2008 holy festival of 'Navratrotsav', was to commence, it was apparent that the conspirators caused bomb blast with an intent to terrorize the people, to cause loss of life and property, disruption of supplies and services essential to the community, to create communal rift and to endanger internal security of the State.

(ii) A Crime bearing CR No.130 of 2008 dated 30th September 2008 was registered at Azad Nagar, Police Station, Malegaon under Sections 302, 307, 326, 324, 427, 153-A & 120-B of Indian Penal Code (for short, "IPC") read with Sections 3, 4, 5 & 6 of Explosive Substances Act, 1908 read with 3, 5 &

25 of the Arms Act read with Sections 15, 16, 17, 18, 20 & 23 of Unlawful Activities (Prevention) Act, 1967 (Amended) 2004 (for short, "UAPA Act").

(iii) The Maharashtra Police invoked provisions of Unlawful Activities (Prevention) Act, 1967 (Amended) 2004 (for short, "UAPA Act") to the said case on 18th October 2008 and the ATS Mumbai applied the provisions of MCOC Act on 29th November 2008.

(iv) The investigation of the said case was subsequently taken over by the National Investigating Agency (for short, "NIA"), New Delhi in pursuance of the Order of Government of India, Ministry of Home Affairs (Internal Security-I Division), New Delhi vide Order No.1-11034/18/2011-IS-IV dated 1st April 2011.

(v) After completion of investigation, A.T.S., Mumbai submitted First Chargesheet on 20th January 2009 against 11 arrested and 03 wanted accused persons. The same was registered as MCOC Special Case No. 01 of 2009 and the cognizance of the said offence was taken by the Trial Court. During the course of further investigation, one of the wanted accused, namely Praveen Venkatesh Takkalki @ Pravin Mutalik @ Pradeep V. Naik was arrested on 1st February 2011 and a Supplementary Chargesheet against him was filed by the A.T.S., Mumbai on 21st April 2011.

(vi) The Government of India, Ministry of Home Affairs, New Delhi vide its Order dated 1st April 2011 Suo-Motu directed the N.I.A. to take up the further investigation of the present crime.

NIA started investigation on the basis of the facts stated in the FIR and the evidence collected by the A.T.S., Mumbai. It was found by N.I.A. that, there were contradictions with regard to the evidence filed with the Chargesheet by A.T.S., Mumbai, which questioned the reliability of witnesses. N.I.A. obtained permission to interrogate the chargesheeted accused persons lodged in judicial custody and carried out their interrogation during the course of its investigation. After completion of investigation N.I.A. submitted its Chargesheet before the Trial Court.

8. In the said Chargesheet, following allegations are made against the Appellant.

- “1. Accused Prasad Purohit had floated Abhinav Bharat organization in the year 2006 in spite of being a serving Commissioned Officer of the Armed Forces of India which is against the services rules.*
- 2. This accused along with other accused had collected huge funds for the Abhinav Bharat organization and directed to disburse it to procure weapons and explosives for their unlawful activities. He is one of the key members of the criminal conspiracy.*
- 3. Accused Prasad Purohit had organized and conducted various meetings with other accused persons in furtherance of their common object of the criminal conspiracy to commit continuous unlawful activities.*
- 4. On 25, 26/01/2008, in a secret meeting at Faridabad, this accused proposed a separate constitution for Hindu Rashtra with separate flag (Bhagwa Flag). He read over*

the constitution of Abhinav Bharat which he had prepared, discussed about the formation of Central Hindu Government (Aryawart) against the Indian Government and put forth the idea of forming this Government in exile in Israel and Thailand. This accused also discussed about taking revenge of the atrocities committed by the Muslims on Hindus.

5. *... (Not relied upon)*
6. *... (Not relied upon)*
7. *This accused had participated in the meeting of Abhinav Bharat which was held in 15 & 16/09/2008 at Bhosla Military School, Nashik, in which accused Ramesh Upadhyay was elected as working president of the Abhinav Bharat. In this meeting, it was decided that the power to take back the weapons acquired for Abhinav Bharat from accused No.10 Sudhakar Dhar Dwivedi would vest with accused Ramesh Upadhyay.*
8. *... (Not relied upon)*
9. *Accused Prasad Purohit collected huge amount of funds for himself and for his Abhinav Bharat organisation out of which Rs. 2.5 lakhs were paid to one builder in Nashik through accused Ajay Rahirkar for booking a house for himself.*
10. *... (Not relied upon)*
11. *... (Not relied upon)*
12. *During investigation, the FSL report was received with regard to the data retrieved from the laptop of accused Sudhakar Dhar Dwivedi (Vol-I-A, Page 141). The voice samples of accused Prasad Purohit, Sudhakar Dwivedi*

and Ramesh Upadhyay are also available which are positive. (Vol-I-393 & Vol-VI-21) as per FSL report.

13. *The authorized intercepted conversation between this accused and accused Ramesh Upadhyay and others reveals that they were also in the process of creating their defence in case. This accused even suggested accused Ramesh Upadhyay to procure another SIM card for himself. He even alerted Upadhyay by saying that, they should be very meticulous thereafter. The post conduct of the accused persons shows the guilt in their minds and their active participation in the crime.*
14. *On 24/10/2008, i.e. after the arrest of accused Pragya Singh Thakur, accused Prasad Purohit had sent a SMS to accused Sameer Kulkarni stating that A.T.S. has entered in his house at Pune and directed him to delete his numbers from telephone and to leave Bhopal immediately. This act of the accused Prasad Purohit confirms his complicity in the present crime.*
15. *During the investigation by NIA, Shri. _____ (PW-55) was re-examined. During examination he stated that, he did not retract in front of the Magistrate while his statement was being recorded on 18.11.2008 U/s. 164 of Cr.P.C. due to threat and pressure of ATS. However he had sent one complaint to Maharashtra State Human Right Commission Mumbai on 05.10.2009 [before transfer of the investigation of the case to NIA] stating that he was forced to give the confessional statement as dictated by the A.T.S. Mumbai. He alleged that the following lies were dictated to him to depose before the*

Magistrate by ATS which he also incorporated in the complaint sent to Maharashtra State Human Rights Commission, Mumbai :-

- [a] That Lt. Col. Prasad Purohit gave him 3 weapons and ammunition to be kept in his house for a month sometime in 2006. The description of the weapons was also dictated to him.*
- [b] That he saw RDX in the house of Lt. Col. Prasad Purohit in a green sack at Devlali.*
- [c] That Lt. Col. Purohit confessed to him about having supplied RDX for Samjhauta Express Blast.*
- [d] That Lt. Col. Purohit told him in the early 2008 that something was planned to be done soon. He further told him that an action was planned in Nashik district in Oct/Nov. 2008.*
- [e] That he was asked to say that Lt. Col. Purohit had confessed to him about planning and executing the Malegaon blast along with his accomplices.*

Notwithstanding the shortcoming in the evidence, at this stage there's sufficient evidence to prosecute A-9 Lt. Col. Prasad Shrikant Purohit under various statutes and sections of law as mentioned in the following chart and the value of the evidence placed on record shall be assessed at the trial stage."

8.1. The N.I.A. has also relied upon other evidence and the statements from which it has come to the conclusion that, the Appellant was having close association with co-accused Sudhakar Udaybhan Dhar Dwiwedi

(A-10), Sudhakar Chaturvedi (A-11), Pravin Takkalki (A-12) etc. The Respondent-N.I.A. therefore has submitted before the Trial Court that, there is sufficient material to take cognizance of the offence and prosecute the Appellant for the offences alleged against him.

9. Dr.Gokhale, submitted that, the Appellant is an employee of Armed Forces and in particular, is affiliated to Military Intelligence Department and therefore 'Sanction' for prosecution of a public servant as contemplated under Section 197 and/or 197(2) of Cr.P.C. by the concerned Authority is necessary. She submitted that, the incident in-question occurred on 29th September 2008. That the Appellant being an Army Officer, in the month of April 2009 a Court of Inquiry (for short, "C.o.I.") was instituted and the Appellant was subjected to C.o.I. to investigate allegations against him. The C.o.I. closed its proceedings in the year 2012. That almost all the personnel who were examined in the course of the C.o.I. deposed in favour of the Appellant, which the C.o.I. has also taken into consideration by the N.I.A. in the course of its investigation. The witnesses before the C.o.I. affirmed and re-affirmed that the Appellant had attended various meetings, of which he has been accused of being a co-conspirator and hence implicated in the bomb blast case, was in fact in discharge of his duty as an Intelligence Officer of the Indian Army and had kept his superiors informed in respect of his whereabouts and discussions which took place and the plans made in the said meetings. That the C.o.I. closed its proceedings in the year 2012

exonerating Appellant from the allegations against him. She submitted that, the Respondent-NIA has specifically dropped statements of various witnesses as inadmissible and has only charged the Appellant as per its Chargesheet (reproduced in para No.8 above). That, the trial Court has dropped charges under the M.C.O.C. Act against the Appellant and other accused persons. She submitted that, the Appellant is still in service and his salary has not been stopped by the Government of India. Though the Appellant has filed on record two compilations of citations, the learned counsel for Appellant pressed into service the following three decisions in support of her various contentions.

- (i) Prashant Bharati V/s. State (NCT of Delhi), (2013) 9 SCC 293
- (ii) Devinder Singh & Ors. V/s. State of Punjab, (2016) 12 SCC 87
- (iii) D. Devraja V/s. Owais Sabeer Hussain, 2020 SCC OnLine SC 517

By relying upon the aforestated citations, she submitted that, there is reasonable nexus between the act done by the Appellant and his official duty. She submitted that, the Appellant acted in good faith and therefore 'Sanction' under Section 197 of Cr.PC. is necessary. She relied upon confidential documents dated 16th January 2008 (page 315) issued by Mr.Rajasegharan MC, Lt.Col., Officer Commanding ; dated 2nd April 2018 (page 547) issued by Mr.S.S. Chahal, Brig., DDGMI (B) for VCOAS and dated 8th February 2019 (page 601) issued by Mr.M.S. Gill, Colonel, Military

Intelligence-9 for Vice Chief of Army Staff. She submitted that, perusal of said letters would clearly indicate that, the Appellant was deputed to collect intelligence about the Hindu Organization, namely, Abhinav Bharat. That the Appellant in his capacity as a public servant performed his official duty in collecting intelligence regarding the said Organization and submitted his inputs to the Higher Authorities. That, the trial Court has erred in not considering the aforestated aspects of the case. She therefore prayed that, the impugned Order passed by the Trial Court may be quashed and set-aside and the Appellant may be discharged from the case for want of Sanction under Section 197 of Cr.PC..

10. Mr.Patil, learned Special P. P. for Respondent-N.I.A. submitted that, the trial Court has already framed charge and thereafter in pursuance of the Orders passed by the Hon'ble Supreme Court and this Court, the trial of the case is being conducted on day-to-day basis. That as of today the prosecution has examined 289 witnesses. He submitted that, once charge is framed and if the accused pleads not guilty, the trial is required to proceed with and thereafter the accused can either be acquitted or convicted, however there cannot be discharge from the case. He placed reliance in the case of *Ratilal B. Mithani V/s. State of Maharashtra & Ors., reported in (1979) 2 SCC 179*. Mr.Patil tendered across the bar a compilation of Exh.4247 ; Exh.4698 filed by the Appellant and replies filed by the N.I.A. to it, as the said documents were not annexed by the Appellant to the Appeal

compilation.

Mr.Patil submitted that, the letters dated 16th January 2008 (page 315), 2nd April 2018 (page 547) and 8th February 2019 (page 601) produced on record by the Appellant in support of his contentions, is his defence in the trial wherein he is an accused and therefore the Appellant is precluded from invoking Section 197 of Cr.PC.. He submitted that, it is the defence of the Appellant that, his act falls within the purview of Section 197 of Cr.PC.. The act of Appellant does not fall within the purview of Section 197 of Cr.PC. as his act is not in colour of his office but totally unconnected with his official duty. That, the Respondent has investigated a crime of a bomb blast in civilian area and therefore the Court of Inquiry conducted by the Military Authorities has no bearing on it. In support of his contention, he relied on a decision of the Supreme Court in the case of *Major Suresh C. Mehra V/s. Defence Secretary, Union of India & Ors., reported in (1991) 2 SCC 198*. He submitted that, as a matter of fact in response to the letter dated 24th March 2011 addressed by the then Chief of Anti Terrorism Squad, Maharashtra, the Deputy Director General of Military Intelligence (B),General Staff Branch, Integrated HQ of MOD (Army), namely, Brig. Gautam Deb has informed the concerned Authority that, there is no input available with his office regarding any official communication made by the Appellant to his superiors pertaining to any terrorist related inputs or information about meetings of Abhinav Bharat. Said letter is annexed at page

603 to the compilation of Appeal. That, Brig. Gautam Deb has been examined as PW-283 in the present case i.e. NIA Special Case No. 01 of 2016 before the Special Court and in his deposition the said witness has proved the said document dated 29th March 2011 including its contents thereof. The said document is on the record of the trial Court at Exh.7778. He therefore submitted that, there are no merits in the contention of the Appellant that 'Sanction' under Section 197 of Cr.P.C. is necessary to prosecute him. He therefore prayed that, the present Appeal may be dismissed.

11. Mr.Nadeem, learned Advocate appearing for Intervenor adopted the arguments of the learned Special PP. He also relied on the decision of the Hon'ble Supreme Court in the case of *Major Suresh C. Mehra (supra)* to contend that, the Court of Inquiry held under the Army Rules is in nature of a preliminary investigation and cannot be equated with a trial. He submitted that, there are no merits in the Appeal and also prayed that, the present Appeal may be dismissed.

12. The Appellant has contended that, the offence alleged against him was committed while performing his official duty or in the colour of his official duty. To substantiate his contention, he has pressed into service following three documents.

- (i) Confidential letter dated 16th January 2008 addressed by Mr. Rajasegharan MC Lt Col, Officer Commanding to Comd LU.
(page 315).

- (ii) Confidential letter dated 2nd April 2018 addressed by S. S. Chahal, Brig. DDGMI (B) for VCOAS to the Appellant (page 547).
 - (iii) Confidential letter dated 8th February 2019 addressed by MS. Gill, Colonel, Colonel Military Intelligence-9 for Vice Chief of Army Staff to Mr. G. P. Singh, IPS, Inspector General (Int & Ops) National Investigating Agency, New Delhi (page 601).
- (a) Letter dated 16th January 2008 is addressed by Rajasegharan MC Lt Col to the Comd LU. It speaks about the information learnt from a 'source' that, the organization i.e. Abhinav Bharat was planning to launch its pol agenda on 26th January 08 at Delhi or on 27th January 08 at Jammu. That, the political wing of the organization was likely to be launched in the month of April/May 08, after clearance from the Election Commission of India. It also refers to the pol agenda of the said organization and the names of certain persons who were likely to attend the said meeting.

It is the contention of the Appellant that, he was the said 'source' referred to in the said letter. A bare perusal of said letter would indicate that, it is difficult to accept the said contention.

- (b) The next letter relied upon by the Appellant is dated 2nd April 2018 addressed by S. S. Chahal, Brig. to the Appellant. The said confidential letter is issued by the concerned authority in response to the Application dated 24th December 2017 submitted by the Appellant himself to the Chief of Army Staff. The said letter also refers to the letter dated 29th March 2011

issued by the then DDGMI (B) to Shri. Rakesh Maria, ADG, ATS. In the said letter it is mentioned that, the Appellant was operating as a 'source' network through which he had obtained intelligence inputs. That, the Appellant's superiors at appropriate level were informed of the inputs provided by the 'source'.

A minute perusal of this letter would clearly indicate that, the Appellant had submitted a letter dated 24th December 2017 to the Chief of Army Staff and in response thereto the said letter dated 2nd April 2018 has been issued by the concerned Authority. It is to be noted here that, the Application below Exh.4698, under Section 227 read with 197 of Cr.P.C. was filed by the Appellant on 6th November 2017 and thereafter the Appellant submitted the said letter dated 24th December 2017 to the Chief of Army Staff. The said letter nowhere mentions that, Appellant was entrusted with the official duty to launch/form the organization namely Abhinav Bharat and to procure explosives for causing terror in the civilian area. According to us, with a view to create defence in his favour the Appellant has procured the said letter dated 2nd April 2018.

(c) The third letter dated 8th February 2019 issued by Mr. MS. Gill, Col. to Mr. G. P. Singh, IPS, Inspector General, NIA is in response to the letter/questionary dated 14th December 2018 sent by the NIA to the concerned Authority seeking certain information. The said letter dated 8th February 2019 categorically mentions that, there is no record to substantiate

the claim of the Appellant that, he sought permission from the competent authority to form Abhinav Bharat trust. That, there was no record to substantiate assertions made with respect to permission from competent authority for collection and disbursements of funds for Abhinav Bharat trust. That, there is no record to substantiate the assertions with respect to meetings of Abhinav Bharat trust attended by Appellant and submission of after meeting records other than the details mentioned in para No.3 of the letter dated 2nd April 2018 (Sr.No.(ii) above).

13. The Respondent NIA has relied upon a letter dated 29th March 2011 addressed by Brig. Gautam Deb, DDGMI (B) to the then Additional Director General of Police, ATS, Mumbai to contend that, the Appellant did not act in his official capacity while committing the present crime. This letter was issued by the concerned Authority to the ATS i.e. the erstwhile investigating agency. The said letter was in response to the query raised by the ATS regarding averment made by Appellant in his Bail Application No.333 of 2011 before this Court. It is categorically stated therein that, there was no input available with the said office regarding any official communication made by Appellant to his superior officers pertaining to any terrorist related inputs or information about the meetings of Abhinav Bharat.

14. The said two documents dated 16th January 2008 (page No.315) and 8th February 2019 (page No.601), if placed in juxtaposition with the document dated 29th March 2011 (page No.603), it clearly contradicts the

document dated 29th March 2011. The document dated 29th March 2011 inspires more confidence in the mind of Court than the other two documents relied upon by the Appellant. It appears to us that, the said two documents dated 16th January 2008 and 8th February 2019 are obtained by the Appellant and pressed into service, only to create defence in his favour and nothing more than it.

15. The document dated 29th March 2011 (page 603) is issued by Brig. Gautam Deb, DDGMI (B). It does not support case of Appellant but in fact falsifies his claim that, he was performing the said act in his official capacity and while performing his duty. The said letter was issued by the concerned Authority to the then Additional Director General of Police A.T.S. who was investigating the present crime. As noted earlier, the said letter was in response to the query raised by A.T.S. regarding averment made by Appellant in his Criminal Bail Application No. 333 of 2011 before this Court. The signatory of the said letter i.e. Brig. Gautam Deb has testified before the Trial Court in the present case i.e. NIA Special Case No. 01 of 2016 as PW-283 and in his deposition he has also proved the said document dated 29th March 2011 including its contents thereof. The said document is on the record of the Trial Court at Exh-7778.

16. The Court of Inquiry constituted by the Army Authorities did not conduct trial of the present crime wherein it has been alleged against the Appellant that, he committed an offence under Section 120-B r/w Section

302 and other related sections of I.P.C. and under the provisions of UAP Act. It is the settled position of law and as has been held by the Hon'ble Supreme Court in the case of Major Suresh C. Mehra (supra) that, the inquiry held under the Army Rules is in the nature of a preliminary investigation and can not be equated as a trial. That, the inquiry being by commanding officer, was not a trial by a Criminal Court or Court Martial and an inquiry was dealt with summarily under the said Rules. The contention of the Appellant that, he has been exonerated by the Court of Inquiry after investigating the allegations against him and therefore he be discharged from the present case for want of sanction under Section 197 of Cr.P.C. therefore can not be accepted and is accordingly rejected.

17. In the case of Prashant Bharati V/s. State (NCT of Delhi) (supra) the issue for consideration before the Hon'ble Supreme Court was regarding framing of charge under Section 376, 328 and 354 of the IPC against the Appellant therein and quashment of F.I.R. under Section 482 of Cr.P.C. The said decision relied upon by the Appellant has no direct bearing on the facts and issue involved in the present case. The next decision relied upon by the Appellant, in the case of Devinder Singh & Ors. V/s. State of Punjab, Through CBI (supra) pertains to a fake encounter by a police officer and it is held therein that, if the version of prosecution about fake encounter is correct, there would be no requirement of sanction under Section 197 of Cr.P.C. The last decision relied upon by the Appellant is in the case of D.

Devraja V/s. Owais S. Hussain (supra). In the said case the issue which fell for consideration before the Hon'ble Supreme Court was regarding taking cognizance of a private complaint filed by the Respondent therein against the Appellant for ill-treating the respondent when he was in police custody. In the said decision, the Hon'ble Supreme Court in para No.67 has held that, the decision in the case of Devinder Singh & Ors. V/s. State of Punjab (supra) is clearly distinguishable as that was a case of killing by the police officer in fake encounter. Thus, the said decisions relied upon by the Appellant are rendered in the context of facts involved in the said cases and are not applicable to the facts involved in the present case.

18. At this stage a useful reference can be made to a decision of the Hon'ble Supreme Court in the case of *P. K. Pradhan V/s. State of Sikkim represented by the Central Bureau of Investigation, reported in (2001) 6 SCC 704*. The Hon'ble Supreme Court in para Nos.5 & 15 of the said decision has held as under :-

“5. 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 interrelated 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 the situation.

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; may be 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.”

19. The Appellant has been charged with the allegations more specifically mentioned para No.8 hereinabove. A minute perusal of record clearly indicates that, the Appellant was never granted permission by the Government to float Abhinav Bharat organization inspite of being a serving Commissioned Officer of the Armed Forces of India. Appellant was also not permitted to collect funds for the said organization and to disburse it to procure weapons and explosives for their unlawful activities. Appellant is the key conspirator in the present crime. Appellant has actively participated with

other co-accused and has organized and conducted various meetings with them in furtherance of their common object of the criminal conspiracy to commit unlawful activities.

If the contention of the Appellant that, he was directed to perform official duty to gather information regarding 'Abhinav Bharat' is to be accepted then the question remains to be answered that, why he did not avert the bomb blast in the civilian locality of Malegaon which caused loss of life of six innocent persons and severe to grievous injuries to about 100 persons. Even otherwise indulging into an activity of a bomb explosion causing death of six persons is not an act done by the Appellant in his official duty.

20. After minutely perusing entire record we are of the considered opinion that, the offence/s alleged against the Appellant under Section 120-B r/w 302 and other related sections of the Indian Penal Code and under the provisions of UAP Act, of commission of murder of six persons and causing serious to grievous injuries to about 100 persons is nothing to do with his official duty. It has nothing to do or related in any manner with the discharge of the official duty of the Appellant. The said act is not in colour of his office, but totally unconnected with his official duty. According to us, there is no reasonable connection between the offence alleged against the Appellant and his official duty. The act alleged against the Appellant has not been committed in discharge of his official duty. Therefore no question at all

of according sanction under Section 197 of Cr.P.C. to prosecute Appellant arises. The trial Court therefore has not committed any error while taking cognizance of the offence alleged against the Appellant and rejecting his Application for discharge on that ground.

21. A cumulative effect of the aforestated deliberation is, there are no merits in the Appeal and the Appeal is accordingly dismissed.

22. In view of disposal of the Appeal, Interim Application No. 1252 of 2021 does not survive and is also disposed off.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]

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