



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 31.10.2023
Judgment pronounced on : 22.11.2023

+ **W.P.(CRL) 299/2019 & CRL.M.A. 2085/2019**

RAKESH BHATNAGAR

..... Petitioners

versus

CENTRAL BUREAU OF INVESTIGATION

.....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Nikhil Pillai, Mr. Harish Malik, Mr. Kshitij Vaibhav and Mr. Parth Kaushal, Advocates

For the Respondent : Mr. Nikhil Goel, SPP with Mr. Kartik Kaushal and Ms. Siddhi Gupta, Advocates

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. This is a petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C”) challenging the impugned order on



charge dated 31.10.2018 and order framing charge dated 04.12.2018 by the learned Special Judge (PC Act), North-West District, Rohini in CBI Case No. 53/2016 titled “**CBI vs Sri Chand & Ors**”.

2. The brief facts as per the case of prosecution culled out from the reply of the respondent to the petition is extracted hereunder:-

“2.1 That the instant case was registered by the Respondent-CBI on 25.10.2006 upon directions issued by this Hon'ble Court passed in Writ Petition (Civil) No. 10066 of 2004. This case was registered in SCR-II branch, CBI against Srichand (A-1) Anna Wankhede (A-2), Mohan Lal (A-3) Prahalad Kumar Thirwani (A-4) and other unknown persons for the commission of offences u/s 120-B r/w 419, 420, 468, 471 IPC and Section 13(2) read with 13(1)(d) of the PC Act.

2.2 That Arvind Cooperative Group Housing Society Limited was registered on 31.03.1973 with 53 promoter members vide registration No. 158-(GH) having registered address at 38, Ram Nagar, New Delhi. As the society was not striving towards the purpose for which it was formed and it was not functioning in accordance with the provisions of Delhi Cooperative Societies Act, the Rules framed thereunder and the bye-laws of the Society, an order dated 16.09.1979 was issued under the signature of Sh. Ashok Bakshi, the then Dy. Registrar of Cooperative Societies, New Delhi for winding up the Society and the said Society was accordingly wound up and subsequently the Society was put under liquidation. Thereafter, Srichand, Anna Wankhede, President of Arvind CGHS Limited, Mohan Lal, Section Officer, Ministry of Defence, New Delhi and Prahalad Kumar Thirwani, Senior Auditor, Registrar Cooperative Societies (RCS), New Delhi and other unknown persons entered into a criminal conspiracy and in pursuance thereof cheated Govt. of NCT Delhi by committing the offences of impersonation, forgery, cheating, use of forged documents as genuine and by abuse of official position fraudulently got allotted the land in the name of the Society from DDA on 24.05.2004 at Dwarka, New Delhi, at a cheaper rate.

2.3 That the investigation revealed that Sh. Anna Wankhede (A-2), had forged a signature as M.L. Sharma (non existing person) Secretary of the Arvind CGHS Limited, made an application on



16.12.2002 to the Registrar of Cooperative Societies, New Delhi after getting hold of the documents of the Society for audit of Arvind CGHS Ltd. and forged the documents in the form of proceedings register, election of General Body Meeting, resignation and enrolment applications for new members, affidavits etc. On the basis of the letter of M.L. Sharma Secretary of the Society, Sh. J.S. Sharma (A-6), Assistant Registrar (Audit) wrote a letter to the Assistant Registrar (South Zone), Office of the Registrar of Cooperative Societies, New Delhi mentioning therein that the Secretary of the Society had applied for the Audit of the said Society for the period from 01.07.1973 to 31.03.2002 which was pending since long. Sh. J.S. Sharma requested the Assistant Registrar (South) to confirm the present status of the Society from office records.

2.4 That the investigation revealed that based on office records, Sh. Prasad Kumar P. (A-5), Dealing Assistant, office of RCS, Delhi wrote a note sheet in which he mentioned the present status of the Arvind Society, but he did not mention in the note sheet regarding the liquidation of the said Society vide order No. 47/158/78/H/CO/1993-99 dated 16.09.1979.

2.5 That the investigation further revealed that on the basis of information provided by Sh. Prasad Kumar P, dealing assistant, the audit branch was conveyed of the above position for further action, but no mention was made in the reply regarding the liquidation of the said Society. This material information was concealed with a mala fide intention and in conspiracy between Sh. J.S. Sharma (A-6), Prasad Kumar P (A-5), Anna Wankhede (A-2), Srichand (A-1) and Mohan Lal (A-3).

2.6 That the investigation further revealed that Anna Wankhede (A-2) by impersonating himself as M.L. Sharma Secretary of the Society, wrote a letter dated 20.12.2002, to the Assistant Registrar (South), that the Society submitted documents for perusal and approval of the list of members of the Society to forward the same to DDA for allotment of land but no request was made for the revival of the Society as it was a liquidated Society and its revival was essential before the approval of the list of the members of the Society. All the documents produced by the Society were forged and fabricated and were prepared by Anna Wankhede (A-2), Mohan Lal (A-3) and Srichand (A-1).



2.7 That after completion of investigation, a report u/s 173 Cr. PC was filed by Respondent-CBI against Sh. Srichand (A-1), Anna Wankhede (A-2), Mohan Lal (A-3), Prahlad Kumar Thirwani (A-4), Prasad Kumar P. (A5), Jeetender Singh Sharma (A-6), Rakesh Bhatnagar(Petitioner) (A-7), Narayan Diwakar (A-8), Bhupinder Singh Kalkoti (A-9), Ashok Kumar Singh (A-10), Jeet Pal Singh (A-11), Hardeep Singh (A-12), Prem Bhutani (A-13), Anil Bhutani (A-14), Yoginder Mohan Duggal (A-15), Rajeev Khanna (A-16) and Ashwani Sharma (A-17) for commission of offences u/s 120-B r/w 419,420,468, 471 IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988.

2.8 That at present the trial of the case is pending in the Court of Special Judge, CBI, Rohini Court, Delhi and is at the stage of Prosecution Evidence.

2.9 That the investigation revealed that the accused/petitioner Rakesh Bhatnagar (A-7) was working as Joint Registrar in Registrar Cooperative Societies office, New Delhi and he had recommended the note sheet of J.S. Sharma (A-6) in a most irregular manner. Before recommending the note sheet, he did not ensure about the revival of the Society and he did not raise any query about liquidation or revival of Arvind CGHS Ltd. He endorsed the recommendation of J.S. Sharma (A-6) for the approval of freeze list of the members of the Society and forwarded the same to DDA for the allotment of land.

2.10 That, the investigation also revealed that the accused/petitioner being a Joint Registrar was duty bound to point out that the Arvind Cooperative Group Housing Society was under liquidation and hence before getting revival, the same could not have been considered for allotment of land. Some of accused tried to get land allotted by forging records of the said Society, introduced some new members by getting fake resignation of existing members and to fulfil their ill design, they involved accused/petitioner Rakesh Bhatnagar (A-7) in conspiracy and the petitioner Rakesh Bhatnagar (A-7) in pursuance of said conspiracy, concealed the fact that said Society was under liquidation as no land could be allotted without revival of said Society.”

ARGUMENTS ON BEHALF OF THE PETITIONER:-



3. Mr. Nikhil Pillai, learned counsel appearing for the petitioner submits that the petitioner was a Central Government/DANICS Officer working in the capacity of the Joint Registrar in the Office of Registrar of Cooperative Societies (hereinafter referred to as “RCS”) appointed by the Lt. Governor, Delhi. He submits that the petitioner was on deputation to the above said Registrar’s office from May 2002 to December 2003.

4. Learned counsel submits that the Arvind Co-operative Group Housing Society (hereinafter referred to as “the society”) was duly registered in the year 1973 and as per the order dated 16.05.1979, the society was wound up by then Deputy Registrar and put up for liquidation.

5. Mr. Pillai, learned counsel submits that the concerned officers of South-Zone of RCS conducted the proceedings regarding the grant of approval and prepared a detailed report on approval of freeze list of 114 members of the society for allotment of land by the Delhi Development Authority (hereinafter referred to as “DDA”). It is submitted that the detailed verifications with respect to original documents of the members were completed by the South-Zone.

6. He further submits that in the report prepared by the South-Zone, an affidavit had been filed by the Secretary of the Society stating that all the information submitted by the society was genuine and in case any of them were found to be fake, then the whole responsibility would be vested upon the Managing Committee of the Society.

7. Mr. Pillai submits that the Dealing Assistant of South-Zone in the office note stated that the freeze list of 114 members are approved for



onward transmission to DDA for allotment of land subjected to the condition that if any of the information received from the society found to be fake, then the Managing Committee of the Society will be held responsible for the same.

8. Learned counsel further submits that the report of the South-Zone was sent to Assistant Registrar of South-Zone, who approved the report by noting that all the requisite documents were verified. Then, the report moved from the South-Zone, and was submitted to the Registrar's office.

9. He submits that on 31.12.2002, the petitioner/Joint Registrar (South) (hereinafter referred to as "JR") noted that all the relevant records placed regarding the society were verified by the concerned zone and relying upon the noting of the Assistant Registrar of South-Zone, the petitioner/JR approved the same. Then the petitioner forwarded the report to the RCS for the approval, who subsequently approved the proposal. On this basis, learned counsel submits that the petitioner's participation is only limited to this extent in the entire matter and there is no other material, evidence or witness on record against the petitioner for any of the offences.

10. Mr. Pillai, further submits that as per the charge sheet dated 25.10.2006, the allegation against the petitioner is that he recommended the proposal of Assistant Registrar (South-Zone) for consideration and approval to the Registrar, Delhi for allotment of land for the society without pointing out the requirement for the revival of the liquidated society before the approval of the list of members. Mr. Pillai categorically submits that it is an admitted position that the winding up



order dated 16.05.1979 to liquidate the society was never a part of the RCS file and was only a part of the DDA file.

11. Learned counsel drew attention of this Court to Rule 105 and Rule 96 of the Delhi Co-Operative Societies Rules 1973 (hereinafter referred to as “DCS Rules, 1973”). The Rules are extracted hereunder:-

“Rule 105- Termination of Liquidation Proceedings:-

1. The winding up proceedings of a society shall be closed within one year from the date of the order of the winding up, unless the Registrar extends the period.

Provided that the Registrar shall not grant any extension for a period exceeding six months at a time and three years in the aggregate, shall immediately after the expiry of three years from the date of the order for winding up of the society, deem, that the liquidation proceedings have been terminated if there are no central amounts due to the Governments or the Financing Bank by the society and pass an order terminating the liquidation proceedings.

Explanation - In the case of co-operative society which is under liquidation at the time of commencement of the Act, the order for winding up of the society shall be deemed for the purpose of this rule to have been passed on the date of such commencement.

2. xxx

3. xxx

Rule 96- Procedure to be followed by the Liquidator

1. The liquidator shall, as soon as the order of winding up of a co-operative society, takes effect, publish by such means as he may think proper, a notice requiring all claims against the co-operative society, the winding up of which has been ordered to be submitted to him within one month of the publication of the notice. All liabilities recorded in the account book of a co-operative society shall be deemed



if so facta have been duly submitted to him under this sub-rule.

2. The liquidator may fix time within which the creditors are to prove their debts or claims. If no claim is made within two months of the date of order of winding up, the liquidator may refuse to entertain such claims.

3. The liquidator soon after his appointment shall take charge of the books of accounts and other documents of the society and all its assets. There shall be prepared immediately on the relevant date a statement as to affairs of the society containing the following particulars:-

a. the assets of the society stating separately the case balance in hand and at the bank, if any, and the negotiable securities, if any, held by the society;

b. its debts and liabilities;

c. the names and addresses and occupation of its creditors staging separately the amount of secured and unsecured debts and in the case of secured debts, particulars of the securities given;'

d. the debts due to the society and the names, residences and occupations of the persons from whom they are due and amount due; and

e. such other information as may be called by the Registrar."

With respect to the above, Mr Pillai submits that there is nothing on record to establish that the Liquidator had taken any step in accordance with the aforesaid rules to finally wind up the said society. Thus, according to him, the society was never wound up and was not a defunct society.

12. Mr. Pillai, learned counsel submits that on 02.01.1980, the then Registrar, Cooperative Societies had also sent a letter/communication to the Secretary of the Society giving directions for the smooth functioning



of the societies. According to learned counsel, this letter was issued on 02.01.1980 after the winding up order dated 16.05.1979 was passed, which clearly points out to the fact that the society was not defunct.

13. Learned counsel refers to the statement of the then Deputy Registrar of the Office of RCS who authored the winding up order dated 16.05.1979 and submits that in the statement he confirms that he authored and issued the winding up order. Then he refers to the statement of the Liquidator of the society wherein the Liquidator stated that the liquidation order available in the DDA file is genuine. On this, he submits that in the statement there was no mention of the process the Liquidator followed and no mention of satisfaction of criteria in Rule 96 of DCS Rules, 1973.

14. Learned counsel refers to the statement of the then Assistant Registrar (South-Zone) Shri Ved Pal Singh and submits that in his statement he has clearly mentioned that due to his ill-health, he did not ask the Dealing Assistant about the note sheets for the period starting from 1973 till 16.12.2002 and J.S. Sharma, AR (Audit) was given additional charge of Assistant Registrar (South-Zone) after his retirement on 31.12.2002. On this, learned counsel submitted that as an Assistant Registrar, it was his duty to scrutinize all the documents but now he is a prosecution witness as he could not discharge his duty of Assistant Registrar at that time.

15. Learned counsel hands over the bench a copy of RTI response of roles and responsibilities of the officers of RCS dated 09.11.2006 F.No.5/1/2006/Estt./Coop./9041. The same is extracted hereunder:-



“As per Section 3 of DCS Act, 1972, powers of RCS are delegated to Joint Registrars, Deputy Registrars and Assistant Registrars, which are exercised but then subject to the general guidance, superintendence and control of the RCS. Further, the RCS has delegated the powers exercised by him under the Act to the JR/DR/AR. The relevant order dated 31/3/2000 delegating these powers under the DCS Act, 1972 and the DCS Rules, 1973 is enclosed. This order was in operation till 20/02/06.

This department has been divided into 9 zones and each zone is headed by an Assistant Registrar, who is in charge of the branch and in respect thereto, exercises control both in regard to the dispatch of business and maintenance of discipline. Work comes to him directly from the Dealing Assistant under his control. He scrutinizes the note of the dealing assistant, disposes off routine cases, take intermediate routine action, records his comments/suggestions wherever necessary and submits the case to the next higher officer. The Asstt. Registrar is responsible for any note in the file and he is supposed to see the factual correctness of the note of the Dealing Assistant of the said zone put up before him. He is also supposed to move proposal for inspection of enquiry u/s 55 or 54 of DCS Act, 1972.”

16. Mr. Nikhil Pillai, learned counsel, draws attention of this Court to the order on charge dated 31.10.2018 and particularly refers to paragraph 22 to submit that it has been wrongly recorded in the charge order that the petitioner argued that the winding up order dated 16.05.1979 is a false document. According to learned counsel it was never argued that the document itself was false; rather, he pointed out that the liquidation has never taken place and the same has been contended in the written submission filed by the petitioner before the learned Trial Court appended at page 303 of the present petition.



17. Learned counsel submits that the only allegation *qua* the petitioner is recorded in paragraph 25 of the order framing charge dated 31.10.2018 stating that the evidence strongly hints towards criminal intention of the petitioner to allow allotment of land to society, by concealing the material fact i.e. fact of liquidation and also necessity of revival of society before allotment of land.

18. Mr. Pillai, learned counsel submits that the charges against petitioner are for the offences under sections 420/468/471 read with section 120-B Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “PC Act”). Though sanction under section 19 of PC Act was obtained, there is no sanction order obtained by CBI under section 197 Cr.P.C. to prosecute the petitioner who is a public servant. Section 197 Cr.P.C. is extracted hereunder:-

“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 sanction¹[save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]--

(a) in the case of person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged



offence employed, in connection with the affairs of a State, of the State Government:

²*[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.]*

³*[Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 166-A, Section 166-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 370, Section 375, Section 376, ⁴[Section 376-A, Section 376-AB, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB] or Section 509 of the Indian Penal Code (45 of 1860).]*

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

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

⁵*[(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article*



356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

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

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

19. Learned Counsel relies on the judgement of the Supreme Court in ***N.K. Ganguly Vs. Central Bureau of Investigation, New Delhi*** reported in (2016) 2 SCC 143 and ***A. Sreenivasa Reddy Vs. Rakesh Sharma and Another*** reported in 2023 SCC OnLine SC 952 to submit that, it is important for the Court to examine allegations against the petitioner, to decide whether previous sanction is required to be obtained from appropriate government before taking cognizance of alleged offence against the petitioner.

20. Mr. Nikhil Pillai, learned counsel appearing for the petitioner concludes his arguments by submitting that the only allegation *qua* the petitioner is that he has concealed the fact of liquidation, which was



never a part of the RCS file and there is no other material to show that he has been a part of the conspiracy. He submits that at best, it is merely a case of dereliction of duty, which is not an offence and does not form a part of conspiracy.

ARGUMENTS ON BEHALF OF RESPONDENT/ CBI

21. *Per Contra*, Mr. Nikhil Goel, learned SPP for CBI submits that there are 4 principles of law which would govern the present petition:-

i) At the stage of framing of charge, the learned Special Judge is required to be satisfied on the existence of '*grave suspicion*' regarding the allegations made in the chargesheet. He submits that without exception, this principle has been followed for over 4 decades for framing charges against an accused. He relies on the judgement of the Supreme Court in ***UOI vs Prafulla Kumar Samal & Others*** reported in (1979) 3 SCC 4.

ii) The above requirement of testing the existence of grave suspicion has to be solely based on the material produced by the prosecution and not by the defence. He relies on the judgement of the Supreme Court in ***State of Orissa vs Debendra Nath Padhi*** reported in (2005) 1 SCC 568. However, there is an exception to it, which has come subsequently that if there is some material of sterling quality then the Investigating Officer must look into it.

iii) Conspiracies are hatched in secrecy. The intent of unlawful act can be inferred and the burden of proof is not to show that each of



the conspirators had knowledge of what others would do, so long as it is known that the cumulative act will result in an unlawful act.

iv) Whether the act is negligent or culpably negligent cannot be looked into at the stage of framing of charges. Whether a particular act would amount to negligence or culpable negligence is only differentiated by the intention of the person committing the act, which can only be established after the entire evidence is led. In the case of *Sushil Ansal vs State* reported in (2014) 6 SCC 173, the Supreme Court provided 3 principles on negligence - 1) there should be a duty; 2) there should be a breach of the duty; 3) that breach of the duty must result in some consequence.

22. Mr. Goel, learned SPP submits that a PIL was filed in 2005, whereby it was brought to the notice of the Court that there were a large number of Societies pertaining to the year 1970-80, which had become defunct. When there was an increase in land prices in the year 1998-2000, a group of land mafia went to the office of RCS, resurrected those defunct societies in the name of the original members who did not exist. The resurrected society made an application to the DDA and got the land allotted in the name of such defunct societies. Thereafter, on paper, removed the erstwhile members of the society and substituted or inserted their own persons as members. This was brought to the notice of this Court in the PIL with a prayer to examine 97 such cases. Mr Goel, learned SPP submits that this case is one among them.



23. Learned SPP submits that the Society was originally registered under the provisions of Delhi Co-operative Society Act, 1972 (hereinafter referred to as “DCS Act 1972”) with 53 promoters and 7 members in the Managing Committee on 31.03.1973.

24. Mr. Goel, learned SPP submits that a letter dated 25.09.1976 was found on the file of the RCS by which it is shown that the then society members intimidated that 61 members have been added as the members of the society. It was found during investigation that the office of RCS had no record of the Society from 1973 to 2000 and no effort was made to reconstruct the file pertaining to the society. This fact coupled with original statements of the members would show that this letter was never written by the society and was placed as a forged document as part of the conspiracy. He further submits that from the year 1973 till 2000, there were no statutory audit report in the file pertaining to the society.

25. Mr. Nikhil Goel, learned SPP submits that on 16.11.1976, the DDA offered a parcel of land to the society for allotment at concessional rate. This was refused by the then members of the society. This offer of allotment was closed in April 1977 as the society failed to respond. He further submits that on 16.05.1979, since the society could not achieve the purpose for which it was registered, it was wound up by order of then Deputy Registrar and put under liquidation. According to Mr. Goel, under the Rule 2(f) of Delhi Co-operative Societies Rules, 2007 (hereinafter referred to as “DCS Rules, 2007”), if a particular society did not conduct audit for 3 years, *ipso facto*, it comes within the definition of “Defunct Co-operative Society”.



26. Mr. Goel, learned SPP submits that during investigation a second letter dated 15.02.1990 was found, purportedly sent by the society intimating the office of the RCS of the change of its address. The investigation has revealed that the new address belonged to somebody else, who upon examination has stated that no society has ever existed on the address at Andrews Ganj. The evidence of the handwriting expert was also obtained by virtue whereof, the IO has concluded that this letter is also forged.

27. Learned SPP submits that from 16.12.2002 to 01.01.2003, in a gap of 14 days, this dead society woke up from the ashes and resurrected itself. An application was made to conduct an audit for a consolidated period of the past 30 years under the signatures of one Sh. M.L. Sharma, who is a fictitious person, purported as Secretary of the Society.

28. Mr. Nikhil Goel, learned SPP further submits that the society had forwarded a list of 114 members (53+61) and 56 out of 61 members were already members in other societies and 4 were found to be non-existent/fictitious and one was the accused. The said list has to undergo examination and scrutiny through three officers of RCS. He submits that the list was first approved by the Dealing Assistant and it was subsequently approved by the Assistant Registrar (South-Zone), who had categorically stated in his noting that he has verified the application of the society from the original records. On that he submits that, CBI found there is no original record, in the absence whereof, it was mandatory to reconstruct an original record. Subsequently, the file was placed before the petitioner/JR, who noted that upon examination of the relevant



records, the information was found to be correct and consequently placed the same before the Registrar of Cooperative Societies. All these actions were completed within a matter of 14 days.

29. Mr. Goel submits that on 03.02.2003, a letter of allotment for a parcel of land was issued and a total sum of Rs. 3.45 crores was deposited in DDA. On this land, 114 flats have been constructed as on the date of investigation i.e., 2007 by the subsequently added members and none of the original members are beneficiaries. This is the intended consequence which the officials of RCS were aware of and this is the criminal misconduct on the part of the public servants including the petitioner.

30. Learned SPP refers to the order dated 09.01.2006 of the learned Division Bench of this Court in WP(C) 10066/2004 which was a Public Interest Litigation. He submits that the CBI was directed to investigate into the revival of 97 societies, wherein, learned Division Bench of this Court, *prima facie* found, that certain builders and public servants have conspired to resurrect/revive societies so that they could get land from DDA at concessional rate. This list of 97 societies was filed by DDA. He further submits that the order shows that even at that stage CBI had undertaken a preliminary enquiry and had made a distinction between those societies which were found to be genuine/correctly revived though there were procedural lapses, versus those societies which were found to have been illegally revived pursuant to unholy alliances of the builders and the RCS members. Subsequently, several FIR's were registered against such builders and RCS members.



31. Mr. Goel, learned SPP brings attention of this Court to sanction order to submit that the Central Vigilance Commission has advised issuance of sanction for prosecution against the petitioner. The same is extracted hereunder:-

“7. Now, therefore, the President of India is pleased to accord the sanction under section 19(1) of the Prevention of Corruption Act, 1988 for prosecution of the said Shri Rakesh Bhatnagar, Junior Administrative Grade officer of DANICS and the then the Joint Registrar(South) in the office of the Registrar of Cooperative Societies (RCS), New Delhi for the said offence/ offences and for any other offences punishable in respect of the aforesaid acts and for taking cognizance of the said offences by the Court of competent jurisdiction”

He submits that the CBI's understanding on reading of the sanction order is that it is a joint sanction order by the competent authority. Mere non-mention of section 197 Cr.P.C is irrelevant.

32. Learned SPP submits that the sanction is to be only granted for actions which are done in the course of official duty as per the ratio laid down in the judgement of the Supreme Court in ***Parkash Singh Badal & Another Vs. State of Punjab & Others*** reported in (2007) 1 SCC 1.

REBUTTAL OF THE PETITIONER:

33. Mr. Nikhil Pillai, learned counsel appearing for the petitioner in rebuttal submits that though the winding up order was passed by the Deputy Registrar in respect of the present society, however, the liquidation process was never concluded in accordance with the rules. According to him, in terms of Rule 105 of DCS Rules 1973, if the



liquidation proceedings are not concluded within 3 years, the winding up order automatically lapses. Thus, he submits that there was no need for the revival of the society when the file with the freeze list was put up before the petitioner in the year 2002.

34. Mr. Pillai, learned counsel submits that learned SPP referred to Rule 2(f) of DCS Rules, 2007 for the definition of 'Defunct Co-operative Society' which is materially different from the DCS Rules, 1973. He further submits that since the society was never liquidated, the question of revival of the same does not arise. The DCS Rules of 2007 were not even in force when the offences alleged against petitioner were stated to have been committed in the year 2002. As per Rule 2 (viii) of DCS Rules, 1973, the definition of 'Defunct Society' is as hereunder:-

"Defunct society" - means a co-operative society classified as such during the course of an audit or enquiry or inspection or after reasons to be recorded in writing declared as such by the Registrar."

Learned Counsel submits that there is no such order on record or any document placed by the CBI to show that the society has been declared as a 'Defunct Society' by the Registrar of Cooperative Societies. In the absence whereof, it would be incorrect to assume that the society in the present case, was defunct requiring revival.

35. Learned counsel for the petitioner submits that the learned SPP did not refer to any document to show how the petitioner is involved in the conspiracy.



36. Mr. Nikhil Pillai submits that it is admitted that sanction under section 19 of PC Act has been obtained. He however disputes the reliance of learned SPP upon the judgement of *Parkash Singh Badal (supra)* to submit that this judgement was distinguished/overruled in the judgement of the Supreme Court in *A. Srinivasalu Vs. State Rep. by the Inspector of Police* reported in **2023 SCC OnLine SC 900**. He submits that according to this judgement of *A. Srinivasalu (supra)*, sanction under 197 Cr.P.C. is mandatory. He submits that since there is no such sanction, the taking of cognizance of the offences under IPC is illegal and framing of charges are to be set aside.

ANALYSIS AND CONCLUSION

37. This Court has heard the arguments of Mr. Nikhil Pillai, learned counsel for the petitioner, Mr. Nikhil Goel, learned SPP for the respondent. This Court has also perused the chargesheet, order on charge and other relevant documents placed on record.

38. Mr. Pillai, learned counsel for the petitioner has strenuously addressed arguments challenging the order framing charges on the following aspect :-

- (i) that no case is made out even if the entire allegations as contained in the chargesheet against the petitioner on facts are taken at their face value; and
- (ii) even otherwise the petitioner is entitled to be discharged on the ground that no sanction under section 197 Cr.P.C. has been obtained by the respondent in accordance with law.



39. So far as the allegations of the prosecution against the petitioner on facts is concerned, Mr. Pillai had submitted that the allegations against the petitioner as per the chargesheet were only to the extent that the petitioner in his capacity as JR had cleared the subject file pertaining to the society without considering the fact that an order of liquidation of the society dated 16.05.1979 was passed and the said file could not have been cleared for approval to be sent to the DDA for allotment of land to the society.

40. Mr. Pillai has also submitted that the liquidation order dated 16.05.1979 was never part of the RCS record or the subject file and it was the CBI, which found the said order in the file pertaining to the society being retained by the DDA during investigations. On that basis, Mr. Pillai submits that the allegations against the petitioner that he did not consider the liquidation order and had approved the subject file is, *prima facie*, without merits.

41. Moreover, Mr. Pillai submits that the Rule 105 of the DCS Rules, 1973, stipulated that the winding up proceeding of a society shall be closed within one year from the date of the order of winding up unless the Registrar extends the period which would be up to a maximum period of three years and in case, the said proceedings are not concluded within the said period, the liquidation proceedings will be deemed to be closed. That apart, Mr. Pillai also relied upon the definition of 'Defunct Society' as per Rule 2 (viii) of the DCS Rules, 1973 to submit that for deeming that a society is defunct, an order in writing carrying such declaration by the Registrar is necessary. According to Mr. Pillai, the



definition of ‘Defunct Society’ as mentioned in sub-Rule (f) of Rule 2 of the DCS Rules, 2007 dated 19.10.2007 and relied upon by Mr. Goel, learned SPP will not be applicable to the facts of the case since the allegations against the petitioner are of the period prior to the coming into force of the DCS Rules, 2007.

42. On the aforesaid submissions, this Court is propelled to first examine the power, scope and jurisdiction of a High Court under Article 226 of the Constitution of India read with section 482 Cr.P.C. in respect of relevant considerations for quashing of an order framing charges as succinctly laid down by the Supreme Court time and again. In particular, the ratio laid down in that regard rendered by the Supreme Court in ***Kanchan Kumar vs. State of Bihar*** reported as **(2022) 9 SCC 577**. The relevant paragraphs of the said judgment are as under :-

“13. The threshold of scrutiny required to adjudicate an application under Section 227 CrPC, is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any infirmities appearing in the case. In Prafulla Kumar Samal¹ it was noted that: (SCC p.9, para 10)

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.



(3) *The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

(4) *That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”*

(emphasis supplied)

14. *In Sajjan Kumar vs. CBI⁶, the Court cautioned against accepting every document produced by the prosecution on face value, and noted that it was important to sift the evidence produced before the Court. It observed that : (SCC pp. 376-77, para 21)*

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge :

(v) At the time of framing of charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence



of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.”

(emphasis supplied)

15. Summarising the principles on discharge under Section 227 CrPC, in *Dipakbhai Jagdishchandra Patel v. State of Gujarat*, this Court recapitulated : (SCC p.561, para 23)

“23. At the stage of farming the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.”

(emphasis supplied)”

It is clear from the aforesaid that a strong suspicion would be sufficient to maintain an order on charge, however, the said strong suspicion must be founded on some material, which must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based



on the moral notions of the judge that here is the case, where it is possible that the accused has committed the offence. Rather, the said suspicion should be premised on some material which commends itself to the Court as sufficient to entertain the prima facie view that the accused has committed the offence.

43. This Court has to now apply the aforesaid principles with the facts obtaining in the present case.

44. There is no dispute so far as the post of the petitioner is concerned and the role and responsibility placed upon him in the office of the RCS. A perusal of the chargesheet, the order on charge and order framing charges indicate that the only allegations against the petitioner are as under :-

a) As per the chargesheet dated 25.10.2006:-

“iv)Sh. Rakesh Bhatnagar, JR (South) in his noting at page 13/N and 14/N has referred the noting from page 7/N onwards proposed for enrollment, resignation, audit and election position of the society for clearance and forwarding the list of members to DDA for conducting draw of lots. He has also mentioned that the proposal has been examined as per directives on the subject and it has been informed that all relevant records in original have been verified by the concerned zone. He recommended the proposal of AR (South) for consideration and approval to the RCS, Delhi without pointing out the requirement for the revival of the liquidated society before the approval of the list of members.....”

b) As per the order on charge dated 31.10.2018:-

“25. There is no quarrel over findings given by the Apex Court, as cited by Ld. Defence Counsel. If allegations of prosecution against this accused are taken as true, at this



stage, all this is not simply a case of dereliction of duty, rather evidence strongly hints towards criminal intention of said accused to allow allotment of land to society, by concealing the material fact i.e. fact of liquidation and also necessity of revival of society before allotment of land. Prima facie involved of accused Rakesh Bhatnagar (A-7) in crime in question is made out.”

c) As per the order framing charges dated 04.12.2018:-

“Accused Rakesh Bhatnagar (A-7), during aforesaid period of 2002 to 2005 while working as Joint Registrar, in the office of RCS, Delhi, submitted a false note, recommending proposal of Assistant Registrar (South) for consideration and for its approval to the Registrar, Co-operative Societies Delhi, deliberately without mentioning the fact that there was requirement for revival of said society (Arvind CGHS), before approval of freeze List of 114 members, as that society had already gone into liquidation.”

From the above, it appears that the learned Trial Court as also the respondent/CBI had presumed that the petitioner was in the know of order dated 16.05.1979 passed by the Deputy Registrar, RCS, whereby the society was ordered to be liquidated/ wound up. However, it is an admitted case of the prosecution too, that the said winding up order was never a part of the subject file and was traced by the CBI itself only from the file of the society maintained by the DDA. Having regard to the aforesaid admitted factual situation, it is difficult, if not impossible to conclude that the petitioner would be having conscious knowledge of the said order. If it is so, then it would be difficult to arrive at any finding of complicity or culpability on the part of the petitioner to have willfully concealed or overlooked such order at the time of approving the note put up by his sub-ordinate.



45. That apart, the rule position in force, as on the date of approval by the petitioner, would also indicate that the order of liquidation may not have been in force or having any effect on the said date. If one were to examine the definition of the words ‘Defunct Society’ as per Rule 2 (viii) of the DCS Rules, 1973, which were prevalent as on the date of alleged offence, it required passing of a formal and written order by the Registrar of Cooperative Societies before any such society could be stated to be defunct. Undoubtedly, no such order exists nor has been brought on record by the CBI. So far as the rule position relied upon by Mr. Goel, learned SPP is concerned, the same was brought into force in the year 2007 and as such the provisions of DCS Rules 1973 were ruling to roost as on the date of alleged offence. Having regard to this undisputed position, this Court agrees with the contention of Mr. Pillai that there is nothing on record to lend credence to the fact that the society in question was a ‘Defunct Society’.

46. Another allegation which was leveled, according to the chargesheet against the petitioner was, that despite the fact that the society appeared to be defunct from the year 1976 till 2002, the petitioner had cleared the subject file for approval of allotment of land without directing or placing a proposal for re-construction of the subject file so as to enable him to find out as to whether the said society was still alive or not. In other words, the case of the prosecution was that the petitioner had failed in discharging his duties and responsibilities as one of the senior most officers in the Office of Registrar of Co-operative Societies to examine and scrutinize the subject files before approving the



note to be put up before the then Registrar of Co-operative Societies for his approval of allotment of land to the society. Other than the above allegation, the entire chargesheet is bereft of any other specific allegation in respect of offences under sections 420, 468 or 471 IPC.

47. Though, Mr. Goel, learned SPP had vehemently argued against the petitioner in regard to the aforesaid allegations, however, this Court is unable to appreciate the same. There is nothing placed on record before this Court to show that any objection was placed before the petitioner by his sub-ordinates in respect of the documents and other relevant record forming part of the subject file, which would have garnered the attention of the petitioner. It appears that by the time the subject file was placed before the petitioner, it was complete in all respects. In that, there are specific notes of the sub-ordinates to suggest that they had carefully perused and verified the documents placed on record by the co-accused persons and had authenticated the same after examining the originals. To the mind of this Court, the petitioner was to examine the noting of the sub-ordinates and consequently, approve or disapprove the same. What is pertinent to note at this stage is that, in the absence of the winding up order dated 16.05.1979, it could not be expected that the petitioner would have examined the subject file with suspicion. So far as the petitioner was concerned, he being the JR of a particular zone had to rely upon his subordinates for the purposes of verification of details in respect of list of members, requisite approvals, filing of audited balance sheets of the societies and payment of monies etc., for the purpose of requisite approvals to be granted by the office of the RCS. The petitioner



appears to have examined and scrutinized the documents on the subject file and after being satisfied of the note put up by the subordinate officers, who had approved the said file and placed the same before the RCS for final sanction.

48. Mr. Goel, learned SPP had vehemently argued that conspiracies are hatched in secrecy and as such, there cannot be any direct evidence in respect of such offences. He had submitted that it is only during evidence that the evidence in respect of conspiracy, can be established.

49. The question of petitioner being part of larger conspiracy along with all the other co-accused persons including other government servants does not appear to be made out on the basis of the aforesaid allegations. It is trite that, suspicion, unless found to be grave, shall not entail framing of charges.

50. The next submission of Mr. Pillai was in respect of the lack of sanction under section 197 Cr.P.C. It is an admitted case of the CBI that though sanction under section 19 of the PC Act was obtained against the petitioner, however, no sanction under section 197 Cr.P.C., was at all obtained against the petitioner in respect of offences under IPC. Mr. Pillai, learned counsel also argued that the petitioner is entitled for discharge forthwith for lack of sanction under section 197 Cr.P.C., 1973, to buttress his arguments, Mr. Pillai relied upon the following judgments – *A. Srinivasulu (supra)*, *A. Srinivasa Reddy (supra)* and *N.K. Ganguly (supra)*.



51. Opposing the said contention, Mr. Goel, learned SPP had fully relied upon the judgment of the Supreme Court in ***Parkash Singh Badal (supra)*** to submit that the Supreme Court in the said judgment had carved out an exception in respect of offences under sections 420, 467, 468, 471 and 120B IPC and held that these offences would not require specific sanction under section 197 Cr.P.C. According to Mr. Goel in the present case though there is no sanction obtained under section 197 Cr.P.C., in respect of the offences under section 420, 468, 471 and 120B IPC, yet by virtue of the ratio laid down by the Supreme Court in ***Parkash Singh Badal (supra)***, the charges framed, cannot be interfered with by this Court on the ground of lack of sanction.

52. To appreciate the arguments addressed by both the counsel, it would be appropriate to first examine the ratio laid down by the Supreme Court in ***Parkash Singh Badal (supra)***. The relevant paragraph is extracted hereunder :-

“49. Great emphasis has been laid on certain decisions of this Court to show that even in relation to the offences punishable under Sections 467 and 468 sanction is necessary. The foundation of the position has reference to some offences in Rakesh Kumar Mishra case²⁷. That decision has no relevance because ultimately this Court has held that the absence of search warrant was intricately (sic linked) with the making of search and the allegations about alleged offences had their determinative role in the issue. A decision is an authority for what it actually decides. Reference to a particular sentence in the context of the factual scenario cannot be read out of context.

50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be



regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence.”

What is to be noted in the aforesaid judgment is that the Supreme Court after having examined a catena of judgments in regard to the requirement of sanction under section 197 Cr.P.C. in respect of offences committed by public servant is concerned, had concluded that the offences under sections 420, 467, 468, 471 and 120B IPC by their very nature cannot be regarded as offences committed while acting or purporting to act in the discharge of official duty. It was this observation and ratio of ***Parkash Singh Badal (supra)*** which was subsequently considered by the Supreme Court in ***A. Srinivasulu (supra)*** and distinguished.

53. The Supreme Court had, in ***A. Srinivasulu (supra)*** held as under:-

“48. Shri Padmesh Mishra, learned counsel for the respondent placed strong reliance upon the observation contained in paragraph 50 of the decision of this Court in Parkash Singh Badal v. State of Punjab. It reads as follows:-

“50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence.”

*Emphasis as marked in the judgement

49. On the basis of the above observation, it was contended by the learned counsel for the respondent that any act done by a public servant, which constitutes an offence of cheating,



cannot be taken to have been committed while acting or purporting to act in the discharge of official duty.

*50. But the above contention in our opinion is far-fetched. The observations contained in paragraph 50 of the decision in Parkash Singh Badal (supra) are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 120B cannot be regarded as having been committed by a public servant while acting or purporting to act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 of the Code does not carve out any group of offences that will fall outside its purview. Therefore, the observations contained in para 50 of the decision in Parkash Singh Badal cannot be taken as carving out an exception judicially, to a statutory prescription. In fact, **Parkash Singh Badal** cites with approval the other decisions (authored by the very same learned Judge) where this Court made a distinction between an act, though in excess of the duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. Interestingly, the proposition laid down in Rakesh Kumar Mishra (supra) was distinguished in paragraph 49 of the decision in Parkash Singh Badal, before the Court made the observations in paragraph 50 extracted above.*

51. No public servant is appointed with a mandate or authority to commit an offence. Therefore, if the observations contained in paragraph 50 of the decision in Parkash Singh Badal are applied, any act which constitutes an offence under any statute will go out of the purview of an act in the discharge of official duty. The requirement of a previous sanction will thus be rendered redundant by such an interpretation.”

It is clear from the aforesaid paragraphs that the Supreme Court in the subsequent judgment of **A. Srinivasulu (supra)** had not only distinguished the observations in para 50 of **Parkash Singh Badal (supra)** but has also categorically held that in case the observations



therein are applied, any act which constitutes an offence under any statute will go out of the purview of an act in the discharge of official duty and hence, concluded that the requirement of previous sanction would be rendered otiose. Keeping in view the aforesaid ratio in *A. Srinivasulu*, the arguments of Mr. Goel based on *Parkash Singh Badal (supra)* would be untenable.

54. That, apart from the above, the judgments of the Supreme Court in *N.K. Ganguly (supra)* and *A. Srinivasa Reddy (supra)* have categorically laid down the law in respect of sanction under section 197 Cr.P.C., as under :-

(a) Paras 19 and 35 of N.K. Ganguly:-

“19. In the instant case, it is alleged in the charge-sheet that the appellants entered into an agreement to commit an illegal act, which is an offence punishable under Section 120-B IPC. Therefore, the provision of Section 197 CrPC squarely applicable to the facts of the case. Prior sanction of the Central Government was required to be taken by the respondent before the learned Special Judge took cognizance of the offence once the final report was filed under Section 173(2) Cr P C. In this regard, Mr Gopal Subramaniam, learned Senior Counsel appearing on behalf of the appellant has very aptly placed reliance on the decision of a three-Judge Bench of this Court in R.R. Chari v. State of U.P., wherein, while examining the scope of Section 197 Cr P C, this Court made an observation indicating that the term “cognizance” indicates the stage of initiation of proceedings against a public servant. The Court placed reliance upon the judgment of the Calcutta High Court delivered in Supt. and Remembrancer of Legal Affairs v. Abani Kumar Banerjee, wherein it was held that before taking cognizance of any offence, a Magistrate must not only be said to have applied his mind to the contents of



the petition: (Supt. and Remembrancer case, SCC OnLine Cal para 8)

8. ... but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter – proceeding under Section 200. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.

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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.

(b) Paras 41, 42, 60 and 61 of A. Srinivasa Reddy:-

41. Section 197 Cr PC provides that when any person who is or was a public servant, not removable from his office save by or with the sanction of the Central Government of State 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 duties, no court shall take cognizance of such offence, except with the previous sanction of the appropriate Government.

42. Sub-section (1) of Section 197 CrPC shows that sanction for prosecution is required where 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 discharge of his official duty. Article 311 of the Constitution lays down that no person, who is a member of a civil service of the Union or State or holds a civil post under the Union or State, shall be removed by an authority subordinate to that by which he was appointed. It, therefore, follows that protection of sub-section (1) of Section 197 Cr P C is available only to such public servants whose appointing authority is the Central Government or the State Government and not to every public servant.

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60. Thus, although in the present case, the appellant has been discharged from the offences punishable under the PC Act, 1988 yet for IPC offences, he can be proceeded further in accordance with law.

61. From the aforesaid, it can be said that there can be no thumb rule that in a prosecution before the Court of Special Judge, the previous sanction under Section 19 of the PC Act, 1988 would invariably be the only prerequisite. If the offences on the charge of which, the public servant is expected to be put on trial include the offences other than those punishable under the PC Act, 1988 that is to say under the general law (i.e. IPC), the Court is bound to examine, at the time of cognizance and also, if necessary, at subsequent stages (as the case progresses) as to whether there is a necessity of sanction under Section 197 Cr P C. There is a material difference between the statutory requirements of Section 19 of the



PC Act, 1988 on one hand, and Section 197 Cr P C, on the other hand. In the prosecution for the offences exclusively under the PC Act, 1988, sanction is mandatory qua the public servant. In cases under the general penal law against the public servant, the necessity (or otherwise) of sanction under Section 197 CrPC depends on the factual aspects. The test in the latter case is of the “nexus” between the act of commission or omission and the official duty of the public servant. To commit an offence punishable under law can never be a part of the official duty of a public servant. It is too simplistic an approach to adopt and to reject the necessity of sanction under Section 197 CrPC on such reasoning. The “safe and sure test”, is to ascertain if the omission or neglect to commit the act complained of would have made the public servant answerable for the charge of dereliction of his official duty. He may have acted “in excess of his duty”, but if there is a “reasonable connection” between the impugned act and the performance of the official duty, the protective umbrella of Section 197 CrPC cannot be denied, so long as the discharge of official duty is not used as a cloak for illicit acts.”

According to the ratio laid down in **A. Srinivasa Reddy (supra)**, the individual against whom the allegations are made, ought to be a ‘Public Servant’ whose appointing authority is the Central Government or the State Government to entitle him to the protection under section 197 Cr.P.C. and not to every public servant. In the present case, undoubtedly, the petitioner is a DANICS officer and his appointing authority is the Central/State Government. There is equally no doubt in the mind of this Court that the allegations against the petitioner are of offences in the discharge of his official duties and as such the rigors of **N.K. Ganguly (supra)** shall apply on all fours and it would be imperative for the prosecution to have obtained the sanction under section 197



Cr.P.C. As such, it is apparent that the prosecution of the petitioner for the aforesaid offences in the absence of the appropriate sanction under section 197 Cr.P.C. would be untenable.

55. Mr. Goel did not dispute the fact that there is no sanction under section 197 Cr.P.C. obtained from the Competent Authority against the petitioner. Having regard to the said admission, and also considering the ratio laid down by the aforesaid authoritative judgments of the Supreme Court, this Court quashes the charges framed against the petitioner under sections 420, 468 and 471 read with 120B IPC.

56. In that view of the matter, the petition is allowed and the impugned order framing charges *qua* the petitioner in respect of offences under PC Act as also the offences under IPC are quashed and set aside.

57. Pending applications, if any, stand disposed of.

58. The aforesaid observations on merits *qua* the petitioner are in respect only of the facts and circumstances arising in the present case alone.

TUSHAR RAO GEDELA, J.

NOVEMBER 22, 2023/*rl*