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

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Reserved on: 27.07.2023

Pronounced on: 13.09.2023

+ **CRL.M.C. 3027/2009 & CRL.M.A. 10209/2009**

SARDOOL SINGH THROUGH SEWA SINGH Petitioner

Through: Dinesh Garg, Advocate

versus

SHIV DAYAL & ANR.

..... Respondents

Through: Mr. Sanjeev Kakkar, Advocate
for R-1.

Mr. Manoj Pant, APP for the
State with Insp. Sandeep
Kumar, P.S. Timarpur.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred by the petitioner for setting aside the impugned order dated 29.07.2009 passed by learned Additional Sessions Judge-01, North, Delhi in Criminal Revision No. 61/2008.

FACTUAL BACKGROUND

2. Briefly stated, the facts of the present case are that on



05.01.2000, when petitioner alongwith his father was present at his residence in Sant Nagar, Burari, few persons had attacked the petitioner and his father with sticks and iron rods due to which petitioner Sardool Singh (now deceased), his son Sewa Singh and one Dharambir had sustained injuries, after which they had been taken to hospital. As stated, the police was informed about the incident and kalandra under Section 107/150 of Cr.P.C. was prepared by the police against the accused persons.

3. On 02.03.2000, the petitioner/complainant late Sardool Singh, had filed a complaint before the learned Metropolitan Magistrate, Delhi against SHO Timarpur i.e. respondent no. 1 herein for non-supply of FIR, and negligence on the part of the Incharge of Police Post Sant Nagar for delaying the registration of the FIR. The concerned Magistrate had issued notice to the concerned SHO/respondent no. 1 seeking his reply. The Court was informed on 09.03.2000 that the case had already been registered as FIR bearing no. 73/2000, dated 23.02.2000 at Police Station Timarpur, after receiving the MLCs of the injured persons. On 01.05.2000, the investigating officer i.e. Head Constable Satbir had filed chargesheet in the aforesaid FIR. On 22.08.2000, the complainant had appeared before the learned Magistrate and had alleged that his statement had been changed by the Investigating Officer which was filed alongwith the chargesheet and that the same was different from the one annexed alongwith Kalandra. Accordingly, learned Magistrate had summoned the records of FIR No. 73/2000 and had found that there were alterations in the statement made by the complainant on the same



day. On 15.11.2000, the Investigating Officer had submitted before the learned Magistrate that on 05.01.2000, he had called the petitioner/complainant at the Police post, after which, the complainant had arrived, and blood was oozing from his nose, and he had made a statement that his '*samdhi*' and other persons had beaten him.

4. Thereafter, on 30.05.2001, an application under Section 340 Cr.P.C had again been filed by the petitioner, in which he had alleged that the FIR had been registered on the basis of false and fabricated statement of the complainant by forging his signature and the investigating officer had wrongly stated before the Magistrate on 15.01.2000 about recording of statement of complainant in Police Post Burari. It was alleged that all three respondents i.e. (i) IO Satbir, (ii) Incharge of PP Burari, Dinesh Kumar and (iii) SHO Shiv Dayal (respondent no. 1) had committed offences punishable under Sections 193/196/197/217/218 of IPC. As per records, an inquiry was also held by the Office of the DCP/North, and that report was also summoned by the learned Magistrate. During the pendency of the inquiry, the complainant Sardool Singh had expired, and his son Sewa Singh was allowed to continue with the inquiry and was substituted as a complainant.

5. On 19.03.2008, the learned Magistrate had passed a summoning order against respondent no. 1 and other accused persons for commission of offences under Sections 466/471/217/218 of IPC.

6. By way of a revision petition, respondent no. 1 had challenged the summoning order dated 19.03.2008, which was set aside by the



learned Additional Sessions Judge, North, Delhi, vide order dated 29.07.2009, against which the complainant/petitioner had preferred the present petition.

SUBMISSIONS BY BOTH THE PARTIES

7. Learned counsel for the petitioner argues that after suffering physical abuse and assault by multiple individuals, the petitioner had given a statement to the police, leading to the registration of a Kalandra, but since FIR was not registered, the petitioner had filed an application before the learned Magistrate for calling the status report, upon which the copy of the FIR was filed by the respondent before the Court. It is further submitted that the FIR subsequently registered did not accurately reflect the petitioner's initial statement, and that the respondent no. 1 and his officials had manipulated the records to alter the statement. It is stated that this discrepancy was brought to the attention of the learned Magistrate, who after due consideration, issued a summoning order on 19.03.2008, which was later erroneously set aside by the learned ASJ. It is argued that the learned Magistrate was justified in passing the summoning order on the basis of evidence reflecting *prima-facie* commission of the offence based on the record itself. It is also stated that even if the original statement made by the petitioner warranted severe punishment, the trial in FIR No. 73/2000 would rely on the material available on the chargesheet, which was based on a fabricated statement, and the petitioner's true version was neither present on the chargesheet nor before the Court, making it challenging to adjudicate the offences committed by the



respondent and his officials in conjunction with or after the conclusion of the FIR No. 73/2000 trial. It is stated by the learned counsel for the petitioner that a significant distinction has been laid down by the Hon'ble Apex Court in various cases between Section 197 of the Cr.P.C. and Section 140 of the Delhi Police Act. It is argued that Section 197 of the Cr.P.C. exclusively applies to offences committed while an individual is 'acting or purporting to act in the discharge of their official duties' and it does not extend to cover acts committed under 'colour of or in excess of the authority'. Therefore, it is prayed that present petition be allowed and order passed by learned ASJ be set aside.

8. On the other hand, learned counsel for respondent no. 1 argues that the only allegation against respondent no. 1 levelled by the petitioner in the complaint dated 02.03.2000 was that there was a delay in registration of the FIR and that the copy of the same had not been provided to him, however, it was revealed that the FIR had got registered on 23.02.2000 after receipt of MLCs. It is further argued that with regard to application filed under Section 340 of Cr.P.C. on 30.05.2001, the allegations regarding fabricating the statement of petitioner and forging his signatures were against the investigating officer and the Chowki Incharge and there were no specific allegations against respondent no. 1, and thus, there was no material on record to have summoned the respondent no.1 for offences under Sections 466/471/217/218 of IPC. It is stated that as rightly held by learned ASJ, the learned Magistrate had not followed the procedure provided in Sections 200-204 Cr.P.C. before issuing summons to



respondent no. 1 and the summoning order was primarily based on a departmental inquiry held by DCP, North and not on the basis of inquiry held by learned Magistrate himself. It is also argued that learned Magistrate had wrongly held that bar under Section 197 Cr.P.C. was not applicable in the present case. Therefore, it is prayed that the present petition be dismissed.

9. This Court has heard the arguments addressed by learned counsel for the petitioner and learned counsel for respondent no. 1, and has perused the material on record.

ANALYSIS AND FINDINGS

10. This Court *vide* order dated 09.1.2017 had framed two issues for consideration in the present petition, *first*, as to whether cognizance of the offences against the respondent no. 1 could have been taken without the sanction as provided under Section 197 of Cr.P.C., and *second*, whether without the main trial having been concluded in FIR no. 73/2000 under Sections 323/325/34 of IPC, the learned Magistrate could have come to a conclusion that the respondent no. 1 did not invoke proper sections of law and that he had prepared fabricated documents thereby committing offences punishable under Sections 466/471/217/218 of IPC.

i. Law of Sanction under Section 197 of Cr.P.C.

11. Section 197 of Cr.P.C. reads as under:

“197. Prosecution of Judges and public servants.—



(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)—

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

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

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.

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 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Penal Code, 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.

(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 (43 of 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.”

12. Explaining the intent and provisions of ***A. Sreenivasa Reddy v. Rakesh Sharma*** 2023 SCC OnLine SC 952, the Hon’ble Apex Court has observed as under:

“40. The Law Commission in its 41st Report has observed:

“15.123. Section 197, as it now stands, applies to a public servant of the specified category only when he is holding office as such public servant. It does not



apply to him after he has retired, resigned or otherwise left the service.....It appears to us that protection under the Section is needed as much after retirement of the public servant as before retirement. The protection afforded by the Section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecutions. It should be left to the Government to determine from that point of view the question of expediency of prosecuting any public servant.”

41. Section 197 of the 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 or 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 of the 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 of CrPC is available only to such public servants whose appointing authority is the Central Government or the State Government and not to every public servant.”

13. The scope of term “while acting or purporting to act in the discharge of his official duty” was elucidated by the Five-Judge



Bench of Hon'ble Apex Court in *Matajog Dobey v. H.C. Bhari* (1955) 2 SCR 925. The relevant observations read as under:

“17. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. But the difference is only in language and not in substance. **The offence alleged to have been committed must have something to do, or must be related in some manner with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty.** It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation...

18. There are two cases of this Court to which reference may be made here. In *Shreekantiah Ramayya Munipalli v. The State of Bombay*, Bose, J. observes as follows: "Now it is obvious that if Section 197 of the Code of Criminal Procedure is construed too narrowly, it can never be applied, for of course, it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning". The question of previous sanction also arose in *Amrik Singh v. State of Pepsu*. A fairly lengthy discussion of the authorities is followed up with this summary: "If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or



opportunity for the acts, then no sanction would be required."

19. The result of the foregoing discussion is this: There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty..."

14. The Three-Judge Bench of Hon'ble Apex Court in *Shreekantiah Ramayya Munipalli v. State of Bombay (1955) 1 SCR 1177* had held as under in relation to "offence" committed in discharge of official duties:

118. Now it is obvious that if Section 197 of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The action has content and its language must be given meaning. What it says is -

"when any public servant ... 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..."

We have therefore first to concentrate on the word "offence".

119. Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the present case, the elements alleged against the second accused are, first, that there was an "entrustment" and/or "dominion"; second, that the entrustment and/or dominion was "in his capacity as a public servant"; third, that there was a "disposal"; and fourth, that the disposal was "dishonest". Now it is evident that the entrustment and or dominion here were in an official capacity. And it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity. **Therefore, the act complained of,**



namely the disposal, could not have been done in any other way. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because the second accused could not dispose of the goods save by the doing of an official act, namely officially permitting their disposal; and that he did. He actually permitted their lease and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it...”

15. The object behind Section 197 Cr.P.C. and the test for determining “official duty” was laid down in case of *State of Orissa v. Ganesh Chandra Jew* (2004) 8 SCC 40 by the Hon’ble Apex Court, and relevant observations in this regard are extracted as under:

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



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

10. ...Use of the expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

11. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is, under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in



nature. The section has, thus, to be construed strictly while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far as its official nature is concerned. For instance, a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that the act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance, a police officer in discharge of duty may have to use force, which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in the course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted...”

16. The principles in relation to applicability of Section 197 Cr.P.C. were laid down by the Hon’ble Apex Court in ***Devinder Singh v. State of Punjab*** (2016) 12 SCC 87, which read as under:

“39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrC has to be construed narrowly and in a restricted manner.



39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.

39.5. In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of court at a later stage, finding to that effect is permissible and such a plea can be taken first time before the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed.

39.7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.



39.9. In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.

17. In *D. Devaraja v. Owais Sabeer Hussain* (2020) 7 SCC 695, the Hon'ble Apex Court has held that even if a policeman has acted in excess of duty while doing an official duty, but there is a reasonable nexus between the act and the performance of official duty, the sanction will be required to prosecute such policeman. The observations in this regard are as under:

“68. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of the government sanction for initiation of criminal action against him.

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

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

18. In *Indra Devi v. State of Rajasthan* 2021 SCC OnLine SC 487,



the Hon'ble Apex Court, while quashing an FIR against a clerk accused of conspiring with his superiors in a case of alleged cheating and forgery of documents and municipality records, had observed as under:

“9. We have given our thought to the submissions of learned counsel for the parties. Section 197 of the CrPC seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognisance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. [See *Subramanian Swamy Vs. Manmohan Singh*]. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. However, such sanction is necessary if the offence alleged against the public servant is committed by him “while acting or purporting to act in the discharge of his official duty” and in order to find out whether the alleged offence is committed “while acting or purporting to act in the discharge of his official duty”, the yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. [See *State of Maharashtra Vs. Dr. Budhikota Subbarao*]. The real question, therefore, is whether the act committed is directly concerned with the official duty.

10. We have to apply the aforesaid test to the facts of the present case. In that behalf, the factum of Respondent No.2 not being named in the FIR is not of much significance as the alleged role came to light later on. However, what is of significance is the role assigned to him in the alleged infraction, i.e. conspiring with his superiors. What emerges therefrom is that insofar as the processing of the papers was concerned, Surendra Kumar Mathur, the Executive Officer, had put his initials to the relevant papers which was held in discharge of his official duties. Not only that, Sandeep



Mathur, who was part of the alleged transaction, was also similarly granted protection. The work which was assigned to Respondent No.2 pertained to the subject matter of allotment, regularisation, conversion of agricultural land and fell within his domain of work. In the processing of application of Megharam, the file was initially put up to the Executive Officer who directed the inspection and the inspection was carried out by the Junior Engineer and only thereafter the Municipal Commissioner signed the file. The result is that the superior officers, who have dealt with the file, have been granted protection while the clerk, who did the paper work, i.e. Respondent No.2, has been denied similar protection by the trial court even though the allegation is of really conspiring with his superior officers. Neither the State nor the complainant appealed against the protection granted under Section 197 of the CrPC qua these two other officers.

11. We are, thus, not able to appreciate why a similar protection ought not to be granted to Respondent No.2 as was done in the case of the other two officials by the Trial Court and High Court respectively. The sanction from competent authority would be required to take cognisance and no sanction had been obtained in respect of any of the officers. It is in view thereof that in respect of the other two officers, the proceedings were quashed and that is what the High Court has directed in the present case as well.”

ii. Whether Sanction under Section 197 Cr.P.C. was necessary in the present case

19. In the present case, the learned Magistrate vide order dated 19.03.2008 had summoned the following accused persons: (i) Investigating Officer namely Satbir, (ii) Incharge of Police Post/Chowki Incharge, Burari, namely Dinesh Kumar and (iii) SHO of PS Timarpur namely Shiv Dayal i.e. respondent no. 1 herein. These accused persons, as per complainant/petitioner herein, had allegedly forged the statement of complainant and used the same in



chargesheet and framed an incorrect record intending to save the accused persons in the FIR No. 73/2000 registered on the complaint of petitioner.

20. At the outset, this Court notes that the summoning order was challenged before the learned ASJ only by respondent no. 1 i.e. SHO Timarpur and not by the other accused persons.

21. This Court has gone through the records of the case and the initial complaint dated 02.03.2000 lodged by the petitioner for non-supply of the copy of FIR and negligence on part of police official for delaying registration of FIR. A perusal of the same reveals that the only allegations contained therein are that:

- i. Chowki Incharge, Sant Nagar, Burari, and IO Satbir deliberately did not register any case against offenders even after receipt of MLC
- ii. All the concerned police officials i.e. SHO (respondent no. 1), Additional SHO, IO, and Chowki incharge, collectively did not take any action on the complaint of petitioner
- iii. After the FIR had finally got registered, IO Satbir had refused to supply the copy of FIR to the petitioner

22. Thus, there were no specific allegations against the respondent no. 1 and the single general allegation against him, contained in para 5 of the complaint dated 02.03.2000 was that he and all other police official had collectively failed to take any action on the complaint of petitioner. No other allegations were leveled in this complaint against the respondent no. 1. Thus, as far as this complaint dated 02.03.2000 is concerned, no offence is made out against the respondent no. 1 for



which he was summoned.

23. Thereafter, the petitioner had filed an application under Section 340 of Cr.P.C. read with Sections 193/196/197/217/218 of IPC on 30.05.2001, in which following allegations were leveled against the against the accused persons:

- i. That the accused persons had registered FIR on the basis of fabricated documents
- ii. IO Satbir had made false submissions before the learned Magistrate regarding recording the statement of petitioner in the presence of Incharge-Police Post, Burari
- iii. The IO Satbir and Incharge, Police Post, Burari had given false and fabricated evidence in judicial proceedings including forged and fabricated statement of the petitioner/complainant
- iv. IO Satbir committed this offence within intent to save accused persons from punishment
- v. Incharge, Police Post, Burari and SHO, P.S. Timarpur (respondent no. 1 herein) associated and participated in the commission of same offence

24. Thus, a bare perusal of the said application and the aforesaid allegations would reveal that the allegations of preparing false and fabricated statement of petitioner etc. were against other accused persons i.e. the IO of the case and In-charge of Police Post, and not against respondent no. 1 i.e. SHO, P.S. Timarpur. Only a general allegations was made against respondent no. 1 that he had participated with other two accused in commission of the offence. Further, since the petitioner Sh. Sardool Singh had passed away



during the pendency of proceedings before the learned Magistrate, his son namely Sewa Singh had tendered pre-summoning evidence before the learned Magistrate in which he had mentioned details of the event dated 05.01.2000.

25. In the present case, this Court also notes that a departmental enquiry had also been initiated against the accused persons under the supervision of one ACP Hawa Singh, who in his report stated that it was the SHO i.e. respondent no. 1 who had forwarded the proceedings under Section 107/150 Cr.P.C., and thus, his plea of ignorance of the proceedings in the present case was false. It was also opined that the SHO could have also invoked more serious sections such as Section 308 of IPC in the present case.

26. A perusal of summoning order would reveal that the learned Magistrate has heavily relied upon this enquiry report conducted by the police department to arrive at a finding that *prima facie* offences under Sections 466/471/217/218 of IPC had been committed by the accused persons.

27. However, having examined the records of the case and the evidence against the respondent no. 1, and even considering the enquiry report submitted by ACP Hawa Singh, the allegations against respondent no. 1 herein would be that he had knowledge of the acts committed by the other accused persons i.e. preparing forged statement of petitioner, and invoking less stringent provision in the FIR.

28. In the preceding discussion, this Court had referred to the precedents of Hon'ble Apex Court in relation to scope of an 'offence



alleged to have been committed by him while acting or purporting to act in the discharge of his official duty'. When the principles in relation to applicability of Section 197 Cr.P.C. are applied to the present case, this Court notes that even a bare reading of the allegations against respondent no. 1 would reflect that the acts alleged to have been committed by him, have a direct and reasonable nexus with the discharge of his official duties. The subject-matter of the allegations leveled by the petitioner is the registration of FIR and preparation of challan, and commission of alleged offences of forgery while discharging such duties. Registering an FIR, carrying out investigation and preparing and filing a final report under Section 173 Cr.P.C. are, undoubtedly, the official duties of an incharge of Police Station i.e. SHO, investigating officer and other concerned police official. Thus, for the purpose of Section 197 of Cr.P.C., such duties would termed as official duties of an SHO.

29. While deciding the issue of sanction under Section 197 Cr.P.C., the primary question is not as to the nature of the offence, but whether the same was committed by a public servant acting or purporting to act in the discharge of his official duties [Ref: **Ganesh Chandra Jew** (*supra*)]. The mere fact that alleged offence pertains to forgery cannot lead to a conclusion that sanction under Section 197 of Cr.P.C. would not be required [Ref: **Indra Devi** (*supra*), **A. Srinivasulu v. State** 2023 SCC OnLine SC 900]. The ultimate test to ascertain as to whether a sanction would be required or not would be as to whether the act committed had a reasonable connection with the discharge of his duties. Further, as held by Hon'ble Apex Court, even



when a policeman has acted in excess of duty while doing an official duty, but there is a reasonable nexus between the act and the performance of official duty, the sanction under Section 197 shall be required.

30. When the facts of the case and the limited allegations against respondent no. 1 herein are examined, the same clearly reflect that the alleged offence and the acts had been committed in relation to registration of FIR and preparation of challan, which are official duties. It is also crucial to note that Section 197 does not only cover the offences committed while ‘acting in discharge of official duties’, but also includes within its ambit the offences committed while ‘purporting to act in such discharge’. Acts such as recording statement of a complainant for the purpose of registration of FIR or invoking relevant sections of IPC are all official acts which are performed by police officials in discharge of their official duties. Therefore, in this Court’s opinion, the alleged act of respondent no. 1 invoking less serious offences in the FIR and allowing the other accused i.e. IO and Incharge of Police Post in fabricating the statement of complainant etc. while registering FIR and preparing challan, *would fall under the category of offence alleged to have been committed while purporting to act in discharge of official duties*. It is also important to note that since such acts were interlinked and closely related to official duties of the accused persons, even department enquiry had been initiated.

31. Thus, this Court is of the considered opinion that the sanction under Section 197 of Cr.P.C. was required before



summoning the respondent no. 1 for the alleged offences, *sans* which, the cognizance/summoning was barred under law.

32. At this stage, when the first issue with respect to Sanction under Section 197 of Cr.P.C. goes against the case of petitioner and in favour of respondent no. 1 and in view of which the summoning of respondent no. 1 cannot sustain, this Court shall not consider the second issue framed in this case *vide* order dated 09.1.2017 since either of the outcome of the said issue shall not have any affect on the impugned orders since there is no sanction under Section 197 of Cr.P.C. in the present case.

33. Therefore, in view of the aforesaid discussion, the present petition is dismissed.

34. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 13, 2023/ns