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

+ **W.P.(CRL) 3231/2019 & CRL.M.A. 40580/2019**

U.C NAHTA

..... Petitioner

Through: Mr. Manish Vashisht, Sr. Advocate
with Mr. Avinash Sharma, Ms.
Akanksha Kapoor, Mr. Vedansh
Vashisht & Mr. Prateek Bhardwaj,
Advocates.

versus

STATE

..... Respondent

Through: Ms. Nandita Rao, ASC (Crl.) for the
State with Ms. Anuka Bachawat &
Mr. Ankit Peswani, Advocates.
SI Yogendra Kumar, P.S. EOW.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER
19.02.2024

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1. The present petition under Article 226 of the Constitution of India read with Section 482 of the CrPC, seeks the following prayers:

a) Set aside/ quash the Kalandara under Section 175 of the Indian Penal Code, 1860 and proceedings arising out of the said Kalandara pending before the Ld. Additional Chief Metropolitan Magistrate, District Court, Patiala House, New Delhi and subsequent proceedings.

b) Pass any other order or order(s) as this Hon'ble Court deems fit and proper in the interest of justice.

2. The petitioner was employed in the capacity of the Director (Inspection and Investigation) at the scale of Additional Secretary to the Government of India. It is submitted that since the petitioner was



discharging his official duty, the *kalandara* could not have been filed without sanction under Section 197 of the CrPC. Learned counsel for the petitioner submits that it is an admitted position that sanction under Section 197 of the CrPC was not obtained.

3. *Per contra*, learned Additional Standing Counsel for the State submits that in the facts and circumstances of the case, sanction under Section 197 of the CrPC was not required. Reliance is placed on paragraph 25 of **Shadakshari v. State of Karnataka and Another, 2024 SCC OnLine SC 48**, wherein the Hon'ble Supreme Court has observed that “*Thus, this court has been consistent in holding that Section 197 Cr. P.C. does not extend its protective cover to every act or omission of a public servant while in service. It is restricted to only those acts or omissions which are done by public servants in the discharge of official duties.*”

4. Heard the parties and perused the record.

5. Section 175 of the IPC provides as under:

“175. Omission to produce document to public servant by person legally bound to produce it.— Whoever, being legally bound to produce or deliver up any document or electronic record] to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the document or electronic record is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

6. *Kalandara* under Section 175 of the IPC in the present case records that despite notices to the petitioner, the required information had not been



supplied. The *kalandara* records as under:

“9. That, till date neither the requisite documents/information have been supplied by the **above mentioned officials** to the investigating agency ie. EOW nor any communication has been received about the status of the same till date. The investigation of this case is pending for last so many years and this agency has to seek time from Hon’ble High Court of Delhi where a Crl MA No. 1701-02 of 2012 in WP No. 784/2011 is pending.

10. That by not supplying the requisite document to the EOW, the Investigating Agency of this case, despite repeated director u/s 91 Cr.P.C. **Shri U C Nahta , the Director** and Sh. Suresh pal, the Jt Director, of Ministry of Corporate Affairs, Shastri Bhawan, New Delhi have willfully omitted/disobeyed the lawful direction u/s 91 Cr PC, of the undersigned, the investigation officer of the above mentioned case.”

(emphasis supplied)

7. The aforesaid *kalandara* was filed for non-compliance of notice under Section 91 of the Cr.P.C. by the petitioner. It is pertinent to note that notice under Section 91 of the Cr.P.C. was sent on the petitioner in his capacity as Director (Inspection and Investigation) and in discharge of his official functions. It is not the case of the prosecution that at the relevant time, the document sought by the Investigating Officer from the petitioner was not in his official capacity. Section 197 of the Cr.P.C provides 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, 3[section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB] 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.

(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.”

8. Since, the offence under Section 175 of the IPC was alleged to have been committed by the petitioner in discharge of his official duties, the sanction under Section 197 of the Cr.P.C was mandatorily required.

9. In view of the above, the impugned *kalandara* under Section 175 of the IPC and proceedings arising out of it pending before the learned Additional Chief Metropolitan Magistrate, District Court, Patiala House, New Delhi are quashed.

10. The petition is allowed and disposed of accordingly.

11. Pending applications, if any, also stand disposed of.

12. Needless to state, nothing stated hereinabove is an opinion on the merits of the case and the observations made are limited to the point of sanction.

AMIT SHARMA, J

FEBRUARY 19, 2024/bsr