IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2025
PRONOUNCED ON : 10.09.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.282 of 2025 and
Crl.M.P.Nos.2563 & 2565 of 2025

M.Selvaraj ... Petitioner

Vs.

State Rep by the
Dept. Superintendent of Police,
Vigilance & Anti-Corruption,
Chennai – 600 028. ... Respondent

PRAYER: Criminal Revision Case is filed under Section 401 r/w 397 of Code of Criminal Procedure, to call for the records in C.C.No.4 of 2017 pending on the file of the Special Court for the cases under the Prevention of Corruption Act at Chennai and set aside the order dated 30.12.2024 and discharge the petitioner from the above case.

For Petitioner	:	Mr.Abudu Kumar Rajarathinam, Senior Counsel for Mr.S.Ashok Kumar
For Respondent	:	Mr.S.Udaya Kumar, Government Advocate (Crl. Side)

ORDER

Challenging the impugned order dated 30.12.2024 in Crl.M.P.No.1335 of 2023 in C.C.No.4 of 2017 passed by the learned Special Judge, Special Court for the cases under PC Act, Chennai, this Criminal Revision Case is filed.

2.This Court by order dated 21.02.2025 had passed the following order:

> *"The petitioner/accused, who is facing trial in C.C.No.4 of 2017, had filed a discharge petition in Crl.M.P.No.1335 of 2023. The trial Court, by order dated 30.12.2024, dismissed the discharge petition, against which, the present revision is filed.*
>
> *2.The case against the petitioner is that the petitioner worked as Secretary to Tamil Nadu Legislative Assembly from 15.05.2006 till 16.05.2011. During the period 2009-2010 as Secretary of the Tamil Nadu Legislative Assembly, had performed Air journey from Chennai to New Delhi on 23.05.2010 and came back to Chennai on 24.05.2010. It is now alleged on private affairs, petitioner travelled on the pretext of attending the meeting with the Secretary General, Lok Sabha, Secretariat at New Delhi. In connection with conference of Presiding Officer and Secretaries of Legislative Bodies in India, which was scheduled to be held at Srinagar from 19.06.2010 to 22.06.2010 and dishonestly claimed a sum of Rs.28,800/- as*

travel allowance. Since no such meeting held, the claim of Rs.28,800/- was loss to the State and hence, the petitioner committed offences under Sections 409, 468, 471 of I.P.C. r/w 13(2) r/w 13(1)(c) of the Prevention of Corruption Act, 1988.

3.The contention of the learned Senior Counsel for petitioner is that the petitioner was targeted due to change of Government. The petitioner obtained permission from the Hon'ble Speaker on 21.05.2010 and thereafter, travelled to New Delhi. The petitioner's travelling to New Delhi and returning back is not disputed, the reason for travel is disputed and interpretation given by the prosecution is that petitioner gone on personal trip, not attended office work. On a demurrer taken to be true then too it would amount to departmental action and not attract offence under Prevention of Corruption Act. Further there is no question of any forgery and using forged documents as genuine and making of any claim. Hence, offence under Sections 468 and 471 will not get attracted. Further submitted that petitioner is not a self drawing officer. The petitioner claimed his bill through finance department. Hence, no entrustment and no misappropriate and Section 409 would not arise. The entire prosecution is with malafide.

4.The learned Government Advocate (Crl. Side) strongly opposed the Senior Counsel's contention stating that the Secretary, successor to the petitioner had given a statement *about the petitioner's private trip and there was no conference or meeting with the Lok Sabha Secretary in New Delhi.*

5.The learned Senior counsel for petitioner submitted that against the petitioner there are 7 cases of similar nature. Earlier for a car maintenance the petitioner is said to have claimed Rs.25,000/- and a case was registered and prosecuted in C.C.No.9 of 2017. This Court finding that prosecution is not sustainable, discharged the petitioner in that case by the order dated 24.01.2022 in Crl.R.C.No.1097 of 2021. This case is also on similar nature. He further submitted that there is no sanction under Section 197 of Cr.P.C. Further the petitioner had informed the trial Court about the pendency of the revision on 19.02.2025. The trial Court failed to consider the same and posted the case for examination of LW1 to LW4 on 28.02.2025. Hence, sought for some protection.

6.In view of the same, the trial Court is directed not to frame charges against the petitioner."

3.In continuation and conjunction to the above order, this Court is passing the following order.

4.The learned Senior Counsel appearing for the petitioner primarily submitted that in this case, the petitioner, a public servant, as per Section 197(1) of Cr.P.C and no Court shall take cognizance of the case except with previous sanction. He further submitted that the petitioner after getting permission and approval from the Speaker of the Tamil Nadu Legislative Assembly went to New Delhi on 23.05.2010 and returned back on 24.05.2010. The petitioner was the Secretary to Tamil Nadu Legislative Assembly from 15.06.2006 to 16.05.2011. During the period 2009-10 as Secretary of the Tamil Nadu Legislative Assembly, travelled from Chennai to New Delhi on 25.05.2010 and came back to Chennai on 24.05.2010 by air, which is now projected as though the petitioner had no meeting with Secretary General, Lok Sabha Secretariat at New Delhi. Hence, the trip was a private visit of the petitioner, for which, the petitioner claimed a sum of Rs.28,800/- as travel allowance by creating false documents and thereby committed cheating and caused loss to the Government.

5.The learned Senior Counsel further submitted that on 21.05.2010, permission obtained from the Speaker and thereafter travelled. On 08.06.2010 the travel expenses paid to the travel agency and his absence in the headquarters treated as On Duty. A letter dated 04.06.2013 received from the

Deputy Secretary, Lok Sabha Secretariat, by the Secretary of Tamil Nadu Legislative Assembly wherein the Legislative Assembly Secretariat was informed that no records available to confirm whether the petitioner had a meeting with the then Secretary General of Lok Sabha on 24.05.2010, in connection with conference of Presiding Officers and Secretaries of Legislative Bodies in India which was scheduled to be held at Srinagar from 19.06.2010 to 22.06.2010.

6.He further submitted that a letter from the Under Secretary of the Legislative Assembly Secretariat dated 09.01.2015 confirms that file pertaining to the Letter No.1(1036)/IC/10 dated 28.01.2011 has been weeded out which is further reiterated by letter dated 04.06.2013. The other documents collected by the respondent is with regard to invoice and letter from the travel agency namely New Sun International Travel Agency confirming issuance of air ticket and receipt of ticket charges. A letter addressed to one Mr.U.P.Ramaiyar, a Public Spirited Person of Ramanathapuram confirmed that no meeting was held with the Secretaries of Legislative Bodies in India on 24.05.2010. In view of the above, it cannot be construed that the petitioner had no official work in New Delhi. Further, there is no other material to show that petitioner attended any private work in New Delhi. Hence, the entire case proceeds on presumption and assumption.

7.He further submitted that the petitioner is targeted since he was the Secretary to the Legislative Assembly and under the Speaker elected by the previous political party in power. In the charge sheet, 11 witnesses listed and documents annexed. Taking the statements of witnesses and documents as a whole, it would clearly prove that the petitioner had undertaken New Delhi trip while acting in discharge of official duty which is now interpreted otherwise. Admittedly, in this case, no sanction under Section 197(1) of Cr.P.C obtained. In support of his submissions, the learned Senior Counsel relied on the decision of the Hon'ble Apex Court in ***Amrik Singh v. State of Pepsu*** reported in ***AIR 1955 SC 309*** wherein it is held that absence of sanction under Section 197(1) is fatal to maintainability of the prosecution case. Further placed reliance on the decision of the Hon'ble Apex Court in ***Dinesh Kumar v. Chairman, Airport Authority of India and another*** reported in ***(2012) 1 SCC 532*** for the point that absence of sanction could be raised at the inception and threshold by an aggrieved person and in case of legality and validity, it can be raised in the course of trial. Further he placed reliance on the decision in ***Central Bureau of Investigation and others v. Pramila Virendra Kumar Agarwal and another*** reported in ***(2020) 17 SCC 664*** wherein the Hon'ble Apex Court reiterated the decision of ***Dinesh Kumar*** (cited supra). He placed reliacne on ***Amod Kumar Kanth v. Association of Victim of Uphaar Tragedy and another*** reported in ***2023 SCC OnLine SC 578*** for the point that sanction under Section 197 Cr.P.C cannot be conflated and confused with the question as to whether an offence has been committed. The salutary purpose behind Section 197 of Cr.P.C. is protection being accorded to public servants. He further placed reliance on the decision of this Court in ***George Lawrence v. E.Venkadesan reported in Crl.O.P.No.20411 of 2022 dated 07.07.2023*** wherein this Court following the decision of the Hon'ble Apex Court in ***D.Devaraja v. Owais Sabeer Hussain*** reported in ***(2020) 7 SCC 695*** decided whether sanction is necessary, the test is whether the act is totally unconnected with official duty or where there is reasonable connection with the official duty.

8.The learned Senior Counsel further submitted that the petitioner is targeted and several cases registered against him. Apart from the above case, a case in C.C.No.9 of 2017 filed for recommending service of his staff car by

Government approved workshop and sanctioning expenditure of Rs.25,000/-, this Court in Crl.R.C.No.1097 of 2021 discharged the petitioner from that case. Further, in this case, sanction under Section 197 Cr.P.C not obtained. In the absence of the same, no cognizance can be taken and the trial Court cannot proceed which fact is not considered by the trial Court in the impugned order. Hence, prayed for quashing.

9.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that the respondent registered a case in 02.07.2012, later on completion of investigation, filed charge sheet against the petitioner and four others for offence under Sections 409, 468, 471 IPC and Sections 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988. The petitioner filed a discharge petition before the trial Court on the ground that sanction not obtained by the prosecution under Section 197(1) Cr.P.C before filing of charge sheet. He further submits that the petitioner attended superannuation on 31.05.2008 and he was given extension of service and finally his service terminated on 16.05.2011, hence, sanction under Section 19 of Prevention of Corruption Act, 1988 is not required and the amendment to the Prevention of Corruption Act, 1988 came into force only in the year 2018.

In this case the petitioner charged for manipulation of records, as if he travelled for official purpose to New Delhi. The petitioner travelled for private purpose, hence, manipulating the records obtained pecuniary advantage, cannot be considered as discharge of official duty. He further submitted that since the then Speaker permitted the petitioner to travel to New Delhi, that would not absolve and allow the petitioner to contend that he travelled to New Delhi as part of official duty. The permission from the Speaker obtained on 21.05.2010 for travel to New Delhi to attend the meeting convened by the Secretary General, Lok Sabha, Secretariat at New Delhi. It is to be seen that the permission obtained to travel to New Delhi on 23.05.2010 and to return on the next day on 24.05.2010. But what was the meeting with the Secretary General of Lok Sabha, Secretariat and what was deliberated in the meeting with the Secretary General, no reports available. On the other hand there are materials to confirm that the petitioner had no meeting with Secretary General of Lok Sabha, Secretariat. The Deputy Secretary and Joint Secretary confirmed the petitioner not visited the Lok Sabha Secretariat in New Delhi. Further, the Public Spirited Person U.P.Ramaiyar obtained a communication through RTI from the Lok Sabha Secretariat confirming the petitioner not visited New Delhi. During investigation, all these documents collected. The petitioner conspired with other accused in preparation of note file, forwarding the same to the Speaker and thereby, cheated and caused loss to the Government for Rs.28,800/-. All these facts are documented and recorded in the files. Once the offence of forgery, cheating and misappropriation is committed, it cannot be construed as official act. Hence, no sanction under Section 197 Cr.P.C required.

10.He further submitted that the Hon'ble Apex Court in the case of ***State of Gujarat v. Dilipsinh Kishorsinh Rao*** reported in ***(2023) 17 SCC 688*** had held that at the time of framing of charges the Court can look into the materials relied by the prosecution only and from the materials, it is clear that *prima facie* case is made out. The petitioner's contention of entitlement and protection under 197 Cr.P.C is a matter of disputed fact which can be decided only during trial.

11.In support of his submissions, the learned Government Advocate (Crl. Side) relied on the decision of the Hon'ble Apex Court in ***Station House Officer, CBI/ACB/BANGALORE v. B.A.Srinivasan and another*** reported in ***(2020) 2 SCC 153*** wherein it is held that the protection under Section 19 of the Prevention of Corruption Act, 1988 is available to a Public Servant only till he is in the employment and no sanction is necessary after the public servant has demitted office or has retired from service prior to 2018 Amendment. With regard to 197 Cr.P.C sanction, it is to be shown that the act of the public servant intricately connected with the discharge of official functions and it cannot be used as cloak to indulge in such activities which resulted in unlawful gain to the beneficiaries. In such cases, the protection under Section 197 will not be available.

12.He further placed reliance on the decision of the Hon'ble Apex Court in ***A.Srinivasulu v. The State Rep. by the Inspector of Police*** reported in ***Live Law (SC) 485*** wherein it had held that there is requirement for previous sanction under Section 197(1) Cr.P.C and Section 19(1) of Prevention of Corruption Act, 1988 for prosecuting under the offences punishable under the Indian Penal Code and Prevention of Corruption Act until the amendment to the Prevention of Corruption Act was brought by Act 16 of 2018 with effect from 26.07.2018. The requirement of the previous sanction under Section 19(1)(a) of Prevention of Corruption Act, 1988 was confirmed only to a person who is employed. On the contrary Section 197(1) made to the requirement of previous sanction necessary both in respect of "any person who is" and in respect of "any person who was" employed. Thus, Section 19(1)(a) of the PC Act was suitably amended so that previous sanction became necessary even in respect of a person who "was employed at the time of commission of the offence". As far as this case is concerned, it is prior to the amendment, hence sanction under PC Act, is not required. With regard to 197(1) Cr.P.C it has to be seen whether the act of the petitioner is "while acting or purporting to act in the discharge of his official duty". Further it had held the act to be seen whether it is in excess of duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. In the case on hand, admittedly though the petitioner had obtained the permission to visit Secretary General of Lok Sabha, Secretariat, he not visited there, but undertook New Delhi trip on 23.05.2010 and came back on 24.05.2010, for which, the Government paid travel and other expenses. This private affair of the petitioner camouflaged and projected as an official trip which is proved by the documents collected from the Secretary, Tamil Nadu Legislative Assembly and from the Secretary of Lok Sabha Secretariat. Hence, by no stretch of imagination, it can be construed that the petitioner's travel to New Delhi on 23.05.2010 and return back on 24.05.2010 in pursuance to discharge of official duty. Hence, prayed for dismissal.

13.This Court considered the rival submissions and perused the materials available on record.

14.It is seen that the petitioner posted as Secretary to Tamil Nadu Legislative Assembly from 15.05.2006 and attained superannuation on 31.05.2008 and was given extension of service for three years with effect from 01.06.2008. Hence, the petitioner served as Secretary, Legislative Assembly, Secretariat from 15.05.2006 to 16.05.2011. On 21.05.2010, the petitioner obtained permission from the Speaker to travel New Delhi to attend meeting with the Secretary General of Lok Sabha Secretariat on 24.05.2010 in connection with conference of the Presiding Officers and Secretaries of the Legislative Bodies in India which was scheduled to be held at Srinagar from 19.06.2010 to 26.06.2010 for which the petitioner incurred an air travel expense to the tune of Rs.28,800/- which was paid to the New Sun International Travel Agency. No one from the Tamil Nadu Legislative Assembly attended the annual conference of the Presiding Officers in Srinagar since there was assembly session there.

15.The case came to be registered after change of Government and the petitioner's service as Secretary got terminated. On conclusion of investigation, charge sheet filed listing 11 witnesses namely the Successor to the petitioner as LW1, LW2 is the Special Secretary to the Assembly Secretary, LW3 is the Proprietor of New Sun International Travel Agency, LW5, LW5, LW6 are the Deputy Secretaries of the Tamil Nadu Legislative Assembly who had spoken about the movement of the file regarding the travel by the petitioner on 23.05.2010 and 24.05.2010 and handed over relavant documents to the Investigating Officer. LW7 is the public spirited person who obtained some details through RTI. LW8 to LW11 are the Deputy Superintendent of Police/Investigating Officers.

16.From the entire statement of witnesses, it is seen that the petitioner as Secretary had obtained permission from the Speaker on 21.05.2010, thereafter, undertook air travel to New Delhi. This fact is not in dispute. The communications received from the Under Secretary and Deputy Secretary of the Legislative Assembly is that there was no meeting conducted by the

Secretary General, Lok Sabha Secretariat. Whether the petitioner had gone for formal meeting or informal meeting is a question of fact. There is no positive material to show that the petitioner had taken a private visit, visited persons unconnected to his official duty, nothing is available.

17.The Hon'ble Apex Court in ***A.Srinivasalu*** case (cited supra) had an occasion to consider 197 Cr.P.C and referred to the decision in ***Dr.Hori Ram Singh v. The Crown*** reported in ***1939 SCC OnLine FC 2*** wherein the Federal Court observed that question is substantially one of fact, to be determined with reference to the act complained of and the attendant circumstances and further classified the cases falling under 197 Cr.P.C in three groups. The relevant portion is extracted as follows:

> *"37.It is seen from the portion of the decision extracted above that the Federal Court categorised in Dr. Hori Ram Singh (supra), the decisions given under Section 197 of the Code into three groups namely (i) cases where it was held that there must be something in the nature of the act complained of that attaches it to the official character of the person doing it; (ii) cases where more stress has been laid on the circumstance that the official character or status of the accused gave him the opportunity to commit the offence; and (iii) cases where stress is laid almost exclusively on the fact that it was at a time when the accused*

was engaged in his official duty that the alleged offence was said to have been committed. While preferring the test laid down in the first category of cases, the Federal Court rejected the test given in the third category of cases by providing the illustration of a medical officer committing rape on one of his patients or committing theft of a jewel from the patient's person.

38.In Matajog Dobey vs. H.C. Bhari 4 a Constitution Bench of this Court was concerned with the interpretation to be given to the words, "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" in Section 197 of the Code. After referring to the decision in Dr. Hori Ram Singh, the Constitution Bench summed up the result of the discussion, in paragraph 19 by holding: "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."

39.In State of Orissa through Kumar Raghvendra Singh vs. Ganesh Chandra Jew5, a two Member Bench of this Court explained that the protection under Section 197 has certain limits and that it is available only when the alleged act is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. The Court *also explained that 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.*"

18.Further, in ***A.Srinivasalu*** case, the Hon'ble Apex Court referred to the decision in ***Devinder Singh v. State of Punjab through CBI*** reported in ***(2016) 12 SCC 87*** wherein the Hon'ble summarized the principles in para 41 which is extracted as follows:

> "*41.In Devinder Singh vs. State of Punjab through CBI, this Court took note of almost all the decisions on the point and summarized the principles emerging therefrom, in paragraph 39 as follows:*
> "*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 CrPC 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."

19.The Hon'ble Apex Court in ***D.Devaraja v. Owais Sabeer Hussain reported in (2020) 7 SCC 695*** had held that 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 this case, the act of the petitioner cannot be termed totally unconnected with the official duty. It is not the case that the petitioner not travelled to New Delhi by air and the air ticket fair falsely reimbursed to the travel agency. The petitioner travelled to New Delhi on 23.05.2010 and returned back on 24.05.2010 is not in dispute. The only factum is that whether this travel was purely for private reasons alone unconnected with the official duty and whether there was any excess of duty which is not connected with the discharge of the official duty, there is no material to this effect.

20.In view of the above, it cannot be said that the petitioner's act will fall outside the discharge of official duty so as to disentitle from protection under Section 197 Cr.P.C. The sanction under Section 197 Cr.P.C., is required in this case and taking cognizance without sanction is not proper.

21.In view of the above, this Court directs the respondent to approach the competent authority to seek grant of sanction for prosecuting the petitioner in accordance with law on or 31.12.2025. In the event of no sanction could be obtained within the above said period, the petitioner accrues entitlement of discharge.

22.In the result, this Criminal Revision Case stands disposed of.

10.09.2025

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No
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To

1.The Special Judge,
Special Court for the cases under PC Act,
Chennai.

2.The Deputy Superintendent of Police,
Vigilance & Anti-Corruption,
Chennai – 600 028.

3.The Public Prosecutor,
Madras High Court.

M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
Crl.R.C.No.282 of 2025

10.09.2025