IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **CRR 1641 of 2019**
Date of Decision:12.05.2025

Mona A Sreenivas ...Petitioner

Versus

The State of Haryana ... Respondent

2. **CRR 1716 of 2019**

Tekan Raj ...Petitioner

Versus

State of Haryana ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. P.S. Ahluwalia, Advocate
for the petitioner in CRR-1641-2019.

Mr. Ashish Gupta, Advocate
for the petitioner in CRR-1716-2019.

Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S.SHEKHAWAT, J.

1. This order shall dispose off two connected revision petitions, i.e., CRR-1641 of 2019 titled as ***"Mona A. Sreenivas Vs. The State of Haryana"*** and CRR-1716 of 2019 titled as ***"Tekan Raj Vs. State of Haryana"*** as both the petitions have been preferred before this Court against the same impugned order dated 04.07.2019 passed by the Court of Additional Sessions Judge, Kaithal, whereby,

the application under Section 319 Cr.P.C. for summoning the petitioners as additional accused, was allowed.

2. The brief facts, which are necessary for the adjudication of the controversy involved in the present case, are that on 28.04.2012, an official letter was sent by the Additional Deputy Commissioner, Kaithal, for registration of a criminal case against Inderjit Singh, main accused, who was working as an employee/accountant in the office of DRDA under a scheme, i.e., Total Sanitation Campaign from 24.10.2008 to 26.04.2012. As per the record, Inderjit Singh had worked as a clerk as well as an accountant since 17.03.1998 in the office of Zila Parishad, Kaithal and had dealt with various government schemes upto 10.04.2012. The complainant orally directed him to produce the record and also issued office orders No. 53/59 dated 10.04.2012 to Inderjeet Singh to produce the record, but he did not comply with the orders. Since, he had failed to discharge his official duties, he was placed under suspension by the Deputy Commissioner, Kaithal, vide order dated 26.04.2012. During this period, a Committee was constituted consisting of Dalip Singh, Accounts Officer, Sarv Sikhsha Abhiyan, Kaithal, Yashpal Mishra, Accounts Officer, Zila Parishad Kaithal and Rakesh Kumar, Accountant, Sarv Sikhsha Abhiyan, Kaithal to verify the official record. As per the inquiry report prepared by this Committee, it was discovered that Inderjit Singh had committed forgery in various signed cheques, withdrew the excess amount as against the amount

shown in cash book and vouchers for his personal profits and as such, he had forged and fabricated the public record and had misappropriated huge government funds. The Committee also found various irregularities in the withdrawal of cash amount and filling of amounts in various cheques. It was also found that the cash withdrawn from different banks on the basis of forged cheques, was misappropriated by him. After the registration of the FIR, the investigation progressed and in the report under Section 173 Cr.P.C., the IO referred 44 cheques, in which the forgeries were committed and huge amounts were withdrawn from the banks and were misappropriated by Inderjit Singh. Even, the original cheques alongwith documents were collected from HDFC bank, Punjab National Bank and Oriental Bank of Commerce by the police, whereas the bill vouchers prepared by Inderjit Singh accused were collected from the Office of Zila Parishad. The statements of various witnesses were also recorded. The police also recovered the photocopies of dispatch register, service book, personal file alongwith SPR from the office of Additional Deputy Commissioner, Kaithal. Even, as per the disclosure statement of Inderjit Singh, he had disclosed his assets of Rs.1,31,10,000/-, which led to addition of the offence under Section 13(1) of the Prevention of Corruption Act, 1988 also (hereinafter to be referred as **'the PC Act'**). After collecting the cheques, the same were sent to the FSL, Madhuban for comparison and after conclusion of the investigation, charge sheet was filed only against Inderjit Singh.

3. During the course of proceedings before the Special Court, Inderjit Singh, main accused, was charge-sheeted for the commission of offence punishable under Sections 409, 420, 467, 468 and 471 of IPC and Section 13(1)(d) of the PC Act, 1988, to which he pleaded not guilty and claimed trial.

4. During the course of trial, the main accused Inderjit Singh moved an application (Annexure P-5) under Section 319 Cr.P.C. on 11.04.2013 to summon DDOs, namely, B.B. Kaushik, R.C. Verma, IAS, Mona A Sreeniwas, petitioner and the complainant, i.e., ADC Kaithal-cum-CEO, DRDA, Kaithal as additional accused. The public prosecutor opposed the application and filed a detailed reply (Annexure P-6). However, vide order dated 01.05.2013 (Annexure P-7), the Court of Additional Sessions Judge, Kaithal, allowed the application qua R.C. Verma, ADC, Kaithal, Narapjeet Singh, the then DSP/IO, Kaithal and Sunil Kumar Aggarwal, the then Chief Manager, Canara Bank, Kaithal and the prosecution was also directed to file three separate challans against three DDOs, namely, Dinesh Yadav, B.B. Kaushik and Mona A Sreeniwas, petitioner. Mona A Sreeniwas and others filed different miscellaneous petitions before this Court, which were disposed off by this Court, vide common order dated 06.12.2016 by observing that the further investigation in the present case was imperative and any direction given by this Court or the

Court of Sessions Judge could not be taken as direction to present challan indicting the accused. It was observed that only requirement was that the investigation should be fair and impartial and the final report should be based on the material collected during such investigation.

5. Thereafter, Mona A. Sreenivas (petitioner in CRR 1641 of 2019) was also joined in further investigation and she was exonerated by the police. Even, the final report was presented only against Inderjit Singh on 04.06.2015.

6. Again Inderjit Singh, sole accused, moved an application under Section 319 read with Section 193 Cr.P.C. for summoning both the present petitioners as additional accused in the present case. A reply (Annexure P-9) was again filed by the public prosecutor, opposing the application (Annexure P-8), whereby, Inderjit Singh had sought the summoning of both the petitioners. The matter was finally dealt by the Court of Sessions Judge, Kaithal and vide order dated 30.01.2016 (annexure P-10), the application was dismissed.

7. After order (Annexure P-10) was passed by the Sessions Judge, Kaithal, the trial proceeded and the prosecution had examined 21 witnesses including Mona A. Sreeniwas, petitioner, who had appeared as PW10 (Annexure P-11). Even, Dr. Kanta Malik, Assistant Director (Documents), FSL (H) Madhuban was examined as a witness in the present case. At this stage, on 08.05.2019, the public prosecutor again moved an application under Section 319 Cr.P.C. (Annexure

P-13) to summon both the present petitioners as accused in the present case. Thereafter, the public prosecutor again moved an application on 04.06.2019 (Annexure P-14) for withdrawal of the application dated 08.05.2019 (Annexure P-13), moved under Section 319 Cr.P.C. Both the said applications were taken up by the trial Court and vide the impugned order, the trial Court dismissed the application for withdrawal dated 04.06.2019 and the application dated 08.05.2019 under Section 319 Cr.P.C. (Annexure P-13) was allowed. Both the petitioners have challenged the legality of the said impugned order dated 04.07.2019 passed by the Court of Additional Sessions Judge, Kaithal, whereby, they have been summoned as additional accused in the present case to face trial with the already arrayed accused.

8. Learned counsel appearing on behalf of Mona A. Sreeniwas (petitioner in CRR-1641 of 2019) vehemently argued that the petitioner remained posted as Additional Deputy Commissioner (ADC), Kaithal, from 02.06.2011 to 02.11.2011 and, thereafter, she remained posted as Deputy Commissioner Kaithal from 02.11.2011 to 07.05.2012. The petitioner was also holding additional charge of several schemes including the Total Sanitation Campaign and also the Chief Executive Officer of Zila Parishad, Kaithal. Inderjit Singh, main accused, was working as accountant in the offices of the Zila Parishad and DRDA, Kaithal, since 17.10.1998 as also an accountant in the office of the Total Sanitation Campaign from 24.10.2008. The entire money transactions were being handled by Inderjit Singh in his

capacity as accountant. He used to initiate all the notings, files pertaining to TSC and Zila Parishad and it was his sole responsibility to maintain the entire record including the financial records of all these affairs. Even, he was the custodian of the entire record and as per the established procedure, his duty was to put up the vouchers with his notings under his signatures. After checking the amounts therein, the petitioner would sanction the same on file notings. Subsequently, Inderjit Singh, accused used to put up the sanctioned vouchers alongwith completely filled up cheques of that amount, which would be sanctioned by the petitioner after verifying the sanctioned amount and she would make the corresponding entries as per the vouchers in the cash book. Inderjit Singh used to fill in the details in his cheques in all respects including the amounts in figures and words and used to get these signed from the Drawing and Disbursing Officer, including the petitioners.

9. Learned counsel further argued that during her tenure as ADC, Kaithal, from 02.06.2011 to 02.11.2011, the petitioner had signed 11 cheques of petty amounts in her capacity as ADC, Kaithal. The vouchers were prepared by Inderjit Singh and were signed by the petitioners. Thereafter, in consonance with the vouchers, the cheques were also presented before the petitioner for signing and the amounts in all cheques in figures and words were filled in by Inderjit Singh, as per the amount of the voucher. Only after putting signatures on the cheques, Inderjit Singh, accused used to make additions and

alterations in the cheques and encashed those himself from the banks. It was impossible for the petitioner and her predecessor/successor to detect the fraud as amount in the vouhcers, cheques and the entries in the cash books were in proper order.

10. Learned counsel further argued that Inderjit Singh, sole challaned accused continued this practice of fraud prior to joining of the petitioner and, thereafter, had misappropriated huge funds from the government exchequer. When the fraud was detected in April 2012, a Committee was constituted for fact finding regarding financial irregularities on the part of Inderjit. The matter was inquired into and a detailed inquiry report dated 27.04.2012 (Annexure P-1) was prepared, highlighting the offence committed by Inderjit Singh, which finally led to registration of the FIR in the present case. Even during the course of investigation, the FSL Madhuban, also submitted its report based on cheques, specimen writings and signatures of the accused and the said report also conclusively proved that the fraud was committed by Inderjit Singh, main accused. The IO recorded the statements of various accused and during investigation also, the police discovered that Inderjit Singh had committed fraud, after the cheques were signed by the DDOs.

11. Learned counsel further contended that the impugned order passed by the trial Court is illegal and against the settled canons of law. In fact, Mona A. Sreenivas, petitioner, has been summoned for the commission of offence under Section 13(1)(d) of the PC Act, 1988

alongwith other penal sections of IPC. However, the impugned order has been passed without getting a prior sanction for prosecution qua her. Learned counsel placed reliance on the law laid down by the Hon'ble Apex Court in the matter of ***Surinderjit Singh Mand and another Vs. State of Punjab and another; 2016(3) RCR (Crl.) 654*** and ***Dilawar Singh Vs. Parvinder Singh @ Iqbal Singh; 2005(4) RCR (Crl.) 855,*** in this regard. Learned counsel further argued that in the present case, the petitioner was found to be innocent and during the course of trial, she appeared as PW10. Now the trial Court has relied upon her testimony to summon her in violation of law laid down by a Division Bench of this Court in the matter of ***Hardev Singh Vs. State of Punjab; 2016(4) RCR (Crl.) 1,*** wherein, this Court held as under:-

> *"The Hon'ble Supreme court categorically held in the above decision that a witness who has got statutory immunity against self-incrimination due to the compulsion of law and of the Court cannot at all be summoned under Section 319 Cr.P.C. and prosecuted. In other words, the question of summoning a witness to face the trial as additional accused under Section 319 Cr.P.C. on the basis of the answers supplied by him on compulsion of law or of Court does not survive for legal scrutiny. Such an exercise is totally against the statutory immunity provided under Proviso to Section 132 of the Evidence Act. The first and second questions of law formulated by the learned Single Judge are answered accordingly."*

12. Learned counsel further submitted that on earlier occasions also, the prosecution had moved two applications under Section 319 Cr.P.C., which were dismissed by the trial Court. Even, while summoning the present petitioner, the trial Court had placed reliance on certain facts, which were not existing and completely overlooked the fact that the present application under Section 319 Cr.P.C. was almost a verbatim copy of earlier application, which was declined by the Court of Sessions Judge, Kaithal. Even, a cumulative reading of both the applications would clearly show that the averments made in the earlier application under Section 319 Cr.P.C. were repeated in the present application. Even the trial Court summoned the petitioner by completely overlooking the settled law that power under Section 319 Cr.P.C. should be used very sparing manner and in the present case, there was no incriminating evidence against the present petitioner.

13. Learned counsel appearing on behalf of Tekan Raj (petitioner in CRR 1716 of 2019) also raised similar arguments. Learned counsel further submitted that the petitioner was the member of the SIT as a DSP and the investigation was done by him in discharge of his official duties. Even, he had been summoned as additional accused by overlooking the fact that the prior sanction for prosecution was required in the present case. Still further, again the impugned order was based on presumptions and without any evidence against him, he has been summoned as an additional accused.

14. On the other hand, learned State counsel has opposed the submissions made by the petitioners on the ground that the petitioners have been summoned after examining the prosecution evidence. However, he admits that the prosecution had moved an application for withdrawal of the application under Section 319 Cr.P.C. before the trial Court.

15. I have heard learned counsel for the parties and perused the record.

16. In the present case, admittedly, both the petitioners were public servants and the alleged wrongful act was done by both of them in official discharge of their duties. Consequently, to effectively adjudicate the issues involved in the present case, it would be necessary to examine the scope and effect of the provisions of Section 197 of the Code of Criminal Procedure 1973 as well as 19 of the PC Act. Apart from that, it would also be necessary to examine whether the want of sanction under these statutory provisions would vitiate the criminal proceedings against both the petitioners, who were public servants. Section 197 of the Cr.P.C. has been reproduced below:-

> ***197. Prosecution of Judges and public servants.***
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> *(1)When any person who is or was a Judge or Magistrate or a public servant not removable from his officer 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-*

(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 376, [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376D 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.

[(3-A) 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.

(3-B) 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".*

17. In fact, the law relating to requirement of sanction to entertain and to take cognizance of an offence, allegedly committed by a public servant, under Section 197 Cr.P.C., is well settled by different judicial pronouncements. The Hon'ble Supreme Court in ***Shreekantiah Ramayya Munipalli Vs. State of Bombay AIR 1955 Supreme Court 287*** discussed the scope and object of Section 197 of the erstwhile criminal procedure code and observed as under:-

> *"18. 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. What it says is—*
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> *'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….'*
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> *We have therefore first to concentrate on the word 'offence'.*
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> *19. 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 release 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."

18. Still further, in ***Sankaran Moitra Vs. Sadhna Das and another (2006) 4 SCC 584,*** the Hon'ble Supreme Court discussed the various judicial pronouncements and observed as under:-

"25. The High Court has stated that killing of a person by use of excessive force could never be performance of

duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of learned counsel for the complainant that this is an eminently fit case for grant of such sanction".

19. Still further, in the matter of ***A. Srinivasulu Vs. The State rep. by The Inspector of Police, 2023 SCC Online SC 900,*** the Hon'ble Supreme Court again examined the scope of provisions of Section 197(1) Cr.P.C. and held as follows:-

> *"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 vs. State of Punjab (2007) 1 SCC 1.** It reads as follows:*
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> *"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."*
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> *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.*
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> *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 (2007) 1 SCC 1 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.

52. It must be remembered that in this particular case, the FIR actually implicated only four persons, namely PW-16, A-3, A-4 an A-5. A-1 was not implicated in the FIR. It was only after a confession statement was made by PW-16 in the year 1998 that A-1 was roped in. The allegations against A-1 were that he got into a criminal *conspiracy with the others to commit these offences. But the Management of BHEL refused to grant sanction for prosecuting A-3 and A-4, twice, on the ground that the decisions taken were in the realm of commercial wisdom of the Company. If according to the Management of the Company, the very same act of the co-conspirators fell in the realm of commercial wisdom, it is inconceivable that the act of A-1, as part of the criminal conspiracy, fell outside the discharge of his public duty, so as to disentitle him for protection under Section 197(1) of the Code.*

53. In view of the above, we uphold the contention advanced on behalf of A-1 that the prosecution ought to have taken previous sanction in terms of Section 197(1) of the Code, for prosecuting A-1, for the offences under the IPC".

20. Apart from that, in the present case, Mona A. Sreenivas, petitioner has also been summoned under the provisions of the PC Act. Before proceeding any further, it would be appropriate to reproduce the provisions of Section 19 of the Prevention of Corruption Act, which clearly makes it evident that the said provisions of law is also mandatory in nature. Section 19 of the PC Act is as follows:-

19. Previous sanction necessary for prosecution.

(1) No Court shall take cognizance of an offence punishable under [sections 7, 11, 13 and 15] [Substituted 'sections 7, 10, 11, 13 and 15' by Act No. 16 of 2018, dated 26.7.2018.] alleged to have been committed by a public servant, except with the previous sanction,

(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] [Substituted 'who is employed' by Act No. 16 of 2018, dated 26.7.2018.] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that 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] [Substituted 'who is employed' by Act No. 16 of 2018, dated 26.7.2018.] in connection with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless-

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, presecribe such guidelines as it considers necessary.

Explanation. - For the purposes of sub-section (1), the expression "public servant" includes such person

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.]

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such

sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation. For the purposes of this section,

(a) error includes competency of the authority to grant sanction;

> *(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature".*

21. Consequently, before a Court takes cognizance against any public servant for the offence committed under the provisions of the PC Act, even on an application under Section 319 Cr.P.C., it would be mandatory to follow the mandate of Section 19 of the PC Act. In a recent judgment, ***The State of Pubjab Vs. Partap Singh Verka, 2024 AIR Supreme Court 3299,*** the Hon'ble Supreme Court dealt with a similar proposition of law and held as follows:-

> *"8. While allowing the Section 319 (CrPC) application moved by the Public Prosecutor, the Trial Court did not consider the question of sanction. Before this Court the stand of the State of Punjab is that there was no need for this sanction as cognizance was taken in the Court itself under Section 319 of the CrPC.*
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> *In **Dilawar Singh v. Parvinder Singh, [(2005) 12 SCC 709],** this Court while explaining the provisions of Section 19 of the P.C Act and also the provisions under Section 319 Cr.PC., said as under:*
>
> *"This section creates a complete bar on the power of the court to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority enumerated in clauses (a) to (c) of this sub-section. If the sub-section is read as a whole, it will clearly show that the sanction for*

prosecution has to be granted with respect to a specific accused and only after sanction has been granted that the court gets the competence to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by such public servant..."

(para 4)

Further, in regard to the relation between Section 19 of P.C Act and the provisions of cognizance under CrPC, this Court laid down the law in the following words:

".......the provisions of Section 19 of the Act will have an overriding effect over the general provisions contained in Section 190 or 319 CrPC. A Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319 CrPC if no sanction has been granted by the appropriate authority for prosecution of such a person as the existence of a sanction is sine qua non for taking cognizance of the offence qua that person."

(para 8)

9. In ***Paul Varghese v. State of Kerala, (2007) 14 SCC 783,*** *this Court again reiterated this provision and held:*

"As has been rightly held by the High Court in view of what has been stated in ***Dilawar Singh case [(2005) 12 SCC 709 : (2006) 1 SCC (Cri) 727]*** *the trial court was not justified in holding that Section 319 of the Code has to get preference/primacy over Section 19 of the Act, and that matter stands concluded."*

(para 4)

10. The words and phrases used in Section 19(1) of the P.C Act itself make it evident that the provision is *mandatory in nature. In* ***Surinderjit Singh Mand v. State of Punjab (2016) 8 SCC 722,*** *although this court was dealing with the issue of sanction under Section 197 of CrPC but while doing so it referred to various judgments including the two cases discussed above and emphasized the provision of prior sanction:*

"The law declared by this Court emerging from the judgments referred to hereinabove, leaves no room for any doubt that under Section 197 of the Code and/or sanction mandated under a special statute (as postulated under Section 19 of the Prevention of Corruption Act) would be a necessary prerequisite before a court of competent jurisdiction takes cognizance of an offence (whether under the Penal Code, or under the special statutory enactment concerned). The procedure for obtaining sanction would be governed by the provisions of the Code and/or as mandated under the special enactment. The words engaged in Section 197 of the Code are, "... no court shall take cognizance of such offence except with previous sanction...".

Likewise sub-section (1) of Section 19 of the Prevention of Corruption Act provides-

"19. Previous sanction necessary for prosecution.-

(1) No court shall take cognizance ... except with the previous sanction ...." The mandate is clear and unambiguous that a court "shall not" take cognizance without sanction. The same needs no further elaboration. Therefore, a court just cannot take cognizance without sanction by the appropriate authority. Thus viewed, we find no merit in the second contention advanced at the hands of the learned counsel for the respondents that where cognizance is taken under Section 319 of the

Code, sanction either under Section 197 of the Code (or under the special enactment concerned) is not a mandatory prerequisite."

11. It is a well settled position of law that courts cannot take cognizance against any public servant for offences committed under Sections 7, 11, 13 & 15 of the P.C. Act, even on an application under section 319 of the CrPC, without first following the requirements of Section 19 of the P.C Act. Here, the correct procedure should have been for the prosecution to obtain sanction under Section 19 of the P.C Act from the appropriate Government, before formally moving an application before the Court under Section 319 of CrPC. In fact, the Trial Court too should have insisted on the prior sanction, which it did not. In absence of the sanction the entire procedure remains flawed. We are completely in agreement by the decision of the High Court and therefore are not inclined to interfere with the impugned order passed by the High Court and accordingly this appeal is hereby dismissed".

22. In the present case, the alleged offence was committed by the petitioners, while acting or purporting to act in discharge of their official duties. Even, learned State counsel is not in a position to controvert the factual submissions made by the learned counsel for the petitioners. Consequently, the legislative mandate engrafted in Section 197 Cr.P.C. as well as Section 19 of the PC Act debarred the Court from taking cognizance of the alleged offence, except with the previous sanction of the competent authority. Thus, this Court finds sufficient force in the submissions made by the learned counsel for

the petitioners that in absence of previous sanction, the trial Court could not have summoned both the petitioners by invoking the provisions of Section 319 Cr.P.C.

23. Apart from that, in the present case, the investigation was repeatedly conducted, i.e., initially on registration of the FIR and later, on the directions passed by the Sessions Judge as well as this Court. Every time, when the investigation was conducted, Mona A. Sreenivas, petitioner was found to be innocent in the present case. Even, it was found that Tekan Raj, was not involved in the offence in any manner. While summoning the petitioners, the Court has merely observed that Tekan Raj, petitioner had entered into a criminal conspiracy to save the concerned DDOs from punishment and had not collected any evidence, which could establish the guilt of the DDOs. He had declared Mona A. Sreenivas as innocent on the basis of her statement recorded under Section 161 Cr.P.C., whereas the cheques in question themselves reflected the increase in amount by way of interpolation and this fact was in the knowledge of the IO, i.e., Tekan Raj, DSP. In fact, this Court has no hesitation in holding that the trial Court had clearly travelled beyond the record and had based the findings on surmises. In fact, the summoning of an accused in a criminal trial is a serious matter and while exercising the powers under Section 319 Cr.P.C., the Court is bound to proceed with care and caution. In the present case, the trial Court has drawn the inference from the facts, which never existed at all. The trial Court

failed to appreciate that the increase in amount by way of interpolation/forgery was committed only by Inderjit Singh, after the cheques were signed by Mona A. Sreenivas, petitioner. She had signed on the cheques as a DDO after verifying the record and she could not have knowledge of the fact of forgery, which was committed after she had signed the cheques in question. Moreover, Tekan Raj, DSP, had recorded her statement under Section 161 Cr.P.C. to that effect, which was dully supported by other documentary evidence available on the file of the IO. Thus, the impugned order has been passed by overlooking investigation conducted by the police.

24. Still further, while passing the impugned order, the trial Court apparently failed to appreciate that at the relevant time Mona A. Sreenivas, petitioner was posted as ADC, Kaithal. The entire process was initiated by Inderjit Singh, main accused, who would prepare the notings on the files pertaining to TSC and Zila Parishad. He was the incharge of the entire record and his duty was to put up the vouchers with his notings under his signatures. After the checking of amounts, Mona A. Sreenivas would sanction the same on file notings. Subsequently, Inderjit Singh, main accused used to place the sanction vouchers alongwith completely filled up cheques of the same amount and the same would be sanctioned by her after verifying the amounts. It was the duty of Inderjit Singh to fill in the details in the cheques in all respects and after checking the entries in vouchers and relevant record, the DDO including Mona A. Sreenivas used to sign the

cheques. During her tenure, Inderjit Singh got signed 11 cheques of petty amounts and there is no allegation that the cheques were not prepared as per the amounts mentioned in the vouchers/other records. However, after obtaining signatures from DDO, Inderjit Singh, accused used to make additions/alterations in the cheques and got those encashed himself, by colluding with the bank officials. Thus, by any stretch of imagination, it cannot be stated that Mona A. Sreenivas (petitioner in CRR 1641-2019) had knowledge about the alleged offence. Moreover, in the present case, the other similarly placed DDOs, i.e., B.B. Kaushik, Dinesh Yadav and R.C. Verma were summoned under Section 319 Cr.P.C. During the course of trial, the main accused Inderjit Singh did not appear and was declared as proclaimed offender. However, vide judgment dated 22.11.2023, the similarly situated DDOs, namely, R.C. Verma, Dinesh Yadav and B.B. Kaushik were ordered to be acquitted as the prosecution could not prove any culpability qua them on record. Thus, it is apparent that there was no question of collusion of DDOs with Inderjit Singh, who had committed the offence of his own and solely responsible for the same.

25. Apart from that, it is also apparent in the present case that Mona A. Sreenivas (petitioner in CRR 1641-2019) was examined by the prosecution as PW10. It is surprising to note that while summoning the petitioners, the trial Court had placed reliance on the testimonies of PW10 Mona A. Sreenivas and PW21 Dr. Kanta Malik.

In fact, the impugned order is liable to be set-aside by this Court solely on this ground alone. In fact, the trial Court committed grave error in summoning Mona A. Singh, on the basis of her own evidence and failed to appreciate the mandate of law as enshrined under Section 132 of the Indian Evidence Act. The petitioner has correctly placed reliance on the law laid down by the Hon'ble Apex Court in the matter of ***Raghuveer Sharma Vs. District Sahakari Krishi Gramin Vikas Bank 2024 INSC 681,*** wherein, the Hon'ble Supreme Court held that in terms of Section 132 of the Indian Evidence Act, no witness could be subjected to criminal prosecution on the basis of his own statement and the relevant extract has been reproduced below:-

> *"23.An order for initiation of process under Section 319 Cr.P.C., against a witness, who has deposed in the trial and has tendered evidence incriminating himself, would be tested on the anvil that whether only such incriminating statement has formed the basis of the order under Section 319 Cr.P.C., 1973. At the same time, mere reference to such statement would not vitiate the order. The test would be as to whether, even if the statement of witness is removed from consideration, whether on the basis of other incriminating material, the Court could have proceeded under Section 319 Cr.P.C., 1973.*
>
> *24. In the case at hand, the appellant has been summoned as an additional accused under Section 319 of the Cr.P.C., 1973 not only on the basis of his pre-summoning statement but on the basis of the statement of PW-1/Narendra Singh Parmar who was examined as a*

witness on 31.03.2022. Had the appellant been proposed as an additional accused on the basis of his statement, he would have been summoned immediately after his pre-summoning statement was recorded on 19.03.2016. Thus, the present is a case where the appellant has been summoned as an additional accused on the basis of the statement of PW-1/Narendra Singh Parmar.

25. The proviso to Section 132 offers statutory immunity against self-incrimination providing that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution or be proved against him in any criminal proceedings except a prosecution for giving false evidence by such answer. Thus, the only protection available is, a witness cannot be subjected to prosecution on the basis of his own statement. It nowhere provides that there is complete and unfettered immunity to a person even if there is other substantial evidence or material against him proving his prima facie involvement. If this complete immunity is read under the proviso to Section 132 of the Act, an influential person with the help of a dishonest Investigating Officer will provide a legal shield to him by examining him as a witness even though his complicity in the offence is writ large on the basis of the material available in the case".

26. Still further, it is also apparent from the record that after Mona A. Sreenivas, petitioner was found innocent during investigation, on 11.04.2013, Inderjit Singh, accused moved an application under Section 319 Cr.P.C. (Annexure P-5) for summoning of Mona A. Sreenivas and other officials. The public prosecutor opposed the prayer made by Inderjit Singh, main accused, by filing a

detailed reply (Annexure P-6) to the said application. Even, the prayer made by Inderjit Singh did not find favour with the trial Court and the trial Court simply ordered further investigation against her and others. Later on, when Mona A. Sreenivas and other challenged the said order before this Court, this Court observed that the investigation shall continue without being influenced by observations made by the trial Court in the order (Annexure P-7). Thereafter, again Mona A. Sreenivas, petitioner was found innocent by the IO. Again, Inderjit Singh, moved another application (Annexure P-8) under Section 319 Cr.P.C. read with Section 193 Cr.P.C. for summoning both the present petitioners and others (Annexure P-8). The Public Prosecutor filed a detailed reply (Annexure P-9) opposing the application under Section 319 Cr.P.C. and ultimately vide detailed order dated 30.01.2016 (Annexure P-10), the Court of Sessions Judge, Kaithal, dismissed the said application. Now, on the third application moved under Section 319 Cr.P.C., the petitioners have been ordered to be summoned to face trial, under the provisions of Section 319 Cr.P.C. In fact, it is strange to notice that the application under Section 319 Cr.P.C. was almost a verbatim copy of earlier application, which was moved by the accused and was dismissed by the Sessions Judge, Kaithal. Still further, the application (Annexure P-13) in question was moved by a public prosecutor, who was not the regular public prosecutor before the said Court and, immediately thereafter, an application (Annexure P-14) was moved for withdrawal of the application (Annexure P-13).

However, the trial Court still wrongly entertained the application and the impugned order is legally unsustainable.

27. In the present case, it also requires mention that the petitioners have not only been summoned on the basis of a third application under Section 319 Cr.P.C., even the trial was at an advanced stage and as many as 17 witnesses have already been examined by the prosecution. Even, the prosecution had examined all the material witnesses and with a view to delay the trial, the present application under Section 319 Cr.P.C. was moved before the trial Court. Later on, Inderjit Singh, absented himself before the Court and was declared proclaimed offender.

28. Still further, the Hon'ble Supreme Court has held in the matter of ***Michael Machado & another Vs. Central Bureau of Investigation & another, 2000(2) RCR(Criminal) 75 : 2000 AIR Supreme Court 1127*** as follows:-

> *"12. But even then, what is conferred on the Court is only a discretion as could be discerned from the words "the Court may proceed against such person". The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. It must be*

remembered that there is no compelling duty on the Court to proceed against other persons.

*13. In **Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors., 1983(1) RCR (Criminal) 73 : 1983(1) SCC 1** this Court has struck a note of caution, while considering whether prosecution can produce evidence to satisfy the Court that other accused against whom proceedings have been quashed or those who have not been arrayed as accused, have also committed an offence in order to enable the Court to take cognizance against them and try them along with the other accused. This was how learned Judges then cautioned :*

"But we would hasten to add that this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken."

14. The Court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of sub-section (4), that proceedings in respect of newly added persons shall be commenced afresh and the witnesses re examined. The whole proceedings must be re-commenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite large in number the Court must seriously consider whether the objects sought to be achieved by such exercise is worth wasting the whole labour already undertaken. Unless the Court is hopeful that there is reasonable prospect of the case as against the newly

> *brought accused ending in conviction of the offence concerned we would say that the Court should refrain from adopting such a course of action".*

29. In view of the above discussion, this Court has no hesitation to hold that the impugned order dated 04.07.2019 passed by the Court of Additional Sessions Judge, Kaithal, has been passed by completely ignoring the evidence, which was available on the file as well as mandatory provisions of law and is liable to be quashed by this Court.

30. Ordered accordingly.

12.05.2025 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No