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

+ CRL.M.C. 1813/2023

B. S. DESAI

.....Petitioner

Through: Mr. R.K. Pandey, Advocate.

versus

THE STATE (NCT) OF DELHI,
NEW DELHI AND ORS.

.....Respondents

Through: Mr. Ajay Vikram Singh, APP for the
State with Insp. Sanjeev Kumar, P.S.
Spl. Cell.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

27.01.2025

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1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the Cr.P.C. seeks the following prayers:

“a) Quash the Order on charge dated 16.03.2018 and charged framed on 12.12.2018 passed by the Ld. Trial Court, Patiala House, New Delhi in Criminal Case No. 46574 of 2016 is arising in the F.I.R No.461 of 2001, P.S. IGI AirPort, Special Cell, New Delhi, titled as State Versus Sayag Rachel and Others

b) Set aside the order dated 31.01.2020 passed by the Additional Sessions Judge, Patiala House Court, New Delhi in Criminal Revision petition No.140 of 2019 titled as B.S. Desai versus The State NCT of Delhi and Others;

c) Petitioner be acquit/discharge from the Criminal Case No.46574/2016 is arising in the F.I.R. No. 461/ 2001, P.S IGI Airport Special Cell, New Delhi; and

d) Pass any other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”



3. The case of the prosecution as per status report dated 02.05.2023 filed by Special Cell is as under:

“1. Brief facts of the case are that on 20.10.2001 one lady holder of Passport No. A 6879612 in the name of Ilavia Rasheed Cyrus approached

Immigration clearance counter at IGI Airport in order to travel to Abhu Dabhi. On questioning it was revealed that her real name was Smt. Sayag Rachel w/o Sayag Uri r/o H. No. 271 Asruy, Israel, she was apprehended while she was trying to board on AI Flight No. 847 from IGI Airport, New Delhi to Abudhabi on Indian passport. On scrutiny of her travelling documents and questioning, it was revealed that she was an Israel National and not an Indian citizen. The Indian passport was given to her by one Mr. B.S. Desai, who met her in Hotel Leela, Mumbai. She also revealed that she was having business in Abudhabi and other countries. Being an Israel national having no diplomatic relation between Israel and Abudhabi, she could not go there on her Israeli passport. Hence, with the help of Mr. B.S. Desai, she obtained the Indian Passport.

On the basis of above facts, a case vide FIR No. 461/2001 Dt. 20.10.2001 u/s 419/420/468/471 IPC, 12 PP Act, 14 F. Act. PS- IGI Airport, New Delhi was registered and accused Smt.Sayag Rachel was arrested.

2. Chargesheet u/s 419/420/468/471 IPC, 12 PP Act, 14 F. Act. PS- IGI

Airport, New Delhi was filed on 19.05.2003 in the Hon'ble court of Ms.

Sangeeta Dhingra, Ld CMM, Tis Hazari Court, New Delhi. Above case is

pending trial.

6. In 1999 petitioner B.S. Desai when he was Joint Secretary, Government of Maharashtra issued a verification certificate in favour of Sayag Rachel knowing that she was an Israel National pursuant to which the Indian Passport was issued in favour of Sayag Rachel. Petitioner retired on 31.05.1999. Accused B.S. Desai was arrested charge was framed against him u/s 420,120B IPC on 04.3.23. No PW has been examined yet. Next date of hearing is 12.7.2023 for PE. As per the statement of I.O. sanction u/ s 197 CrPC was not obtained as the petitioner had already retired in 1999



and FIR was registered in 2001.”

4. Learned counsel for the petitioner submits that the learned Trial Court failed to appreciate the fact that the petitioner at the relevant point of time, i.e., during issuance of the ‘Specimen Verification Certificate’ to the co-accused Sayag Rachel (accused no. 1) as a precursor to procuring the Indian passport, was working as the Deputy Secretary to the Government of Maharashtra and not the Joint Secretary as is corroborated by the pay-slips from the month of November, 1998 to February, 1999 which reflects the designation of the petitioner to be the Deputy Secretary to the Govt. of Maharashtra in the department of Rural development and Water Conservation. It is further submitted that since the petitioner was working in the capacity of a public servant with the Govt. of Maharashtra at the relevant point of time and got promoted to the post of Joint Secretary in 1999 (effective), previous prosecution sanction from the Central Govt under Section 197(1) of the CrPC was required and he could not have been prosecuted without such sanction and hence, charges could not be framed against him. Furthermore, it is also submitted that in the chargesheet it is nowhere mentioned that the petitioner had known the co-accused personally or had received any illegal gratification from her for his aforementioned acts, therefore, the learned Trial Court erred in framing charges against the petitioner.

5. Learned counsel for the petitioner further submits that the prosecution sanction was required even if the petitioner retired in 1999 and the subject FIR came to be registered only in 2001. Learned counsel relies on a judgement in CrI. Petition no. 988/2018 dated 2nd December, 2021 titled



‘Dr. B.M. Mohan vs. the State of Maharashtra and Anr.’ to highlight that prosecution sanction under 197(1) of the Cr.P.C. is mandatory prerequisite to proceed against any public servant, even if the public servant would be a retired employee at the time of filing of the chargesheet.

6. *Per contra*, learned APP for the State submits that the decision of learned Trial Court as well as the learned ASJ in the revision petition did not suffer from any infirmity. It is submitted that the petitioner was a public servant working in the capacity of a Joint secretary, Government of Maharashtra in the department of Rural development and Water Conservation and had retired on 31.05.1999, but the verification certificate issued in favour of the co-accused Sayag Rachel was not an act done by the petitioner in discharge of his official functions but in his personal capacity. It is further submitted that the FSL report is also on record to establish that the signature in the said verification certificate was that of the petitioner. All other contentions raised by the petitioner are a matter of trial and in view of the fact that the alleged act was not in discharge of the petitioner's functions, no sanction under Section 197 of the Cr.P.C. is required.

7. Heard learned counsel for the parties and perused the record.

8. Chargesheet in the aforesaid FIR has been filed before the Court of competent jurisdiction on 19.05.2003 and *vide* order dated 16.03.2018 charges were ordered to be framed against the present petitioner and co-accused Sayag Rachel under Sections 420 read with 120B and Section 420 simpliciter of the IPC. Learned Trial Court while ordering the framing of charge has observed and held as under:-

“10. Section 197 Cr. P. C. requires that the concerned public servant is not removable from his office except by the Central Government or State Government or with the sanction of the



concerned Governments, he has committed the alleged offence while he was performing the official duty or performing to act in discharge of his official duty. It has been held in ***Manohar Nath Kaul vs. State, 1981 ALJ 1771 J &K***, wherein it has been held that the connection between the complained act and the official duty must be such that accused can say that the connection between the complained act and the official duty must be such that accused can say that the act was done in the course of performance of his duty, but such claim must not be pretended or fanciful claim.

11. It is pertinent to mention that it has also been held in the case of ***State of Maharashtra vs. R. S. Nayak & Another AIR 1982 SC 1249***, wherein it has been held that prosecution under Section 197 Cr. P. C. is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duties.

12. In the present case, accused B.S. Desai had issued the verification certificate of accused Sayag Rachel (Proceedings kept in abeyance) when he was the Joint Secretary, Government of Maharashtra, Department of Rural Development and Water Conservation. The issuance of verification certificate in favour of accused Sayag Rachel (Proceedings kept in abeyance) by him was not in dereliction or anyway connected of his official duties. He had issued the verification certificate to an Israeli National, Sayag Rachel (Proceedings kept in abeyance) so that an Indian Passport could be issued to her, which is not an act done in discharge of his official duty. Therefore, in view of the aforesaid facts and circumstances, this Court is of the opinion that Sanction under Section 197 Cr. P. C. is not required with respect to accused B. S. Desai.”

9. Subsequently, the aforesaid order on charge was challenged by the petitioner by way of the revision petition before the learned ASJ. The said petition was dismissed *vide* order dated 30.01.2020 by the learned ASJ, wherein it was observed and held as under:-

“8. The contention of the Ld. Counsel for the revisionist is that FSL report cannot be relied upon as as per FSL report admitted handwriting of the revisionist tallied with the signatures on the verification certificate but as no verification certificate was sent to



FSL, this report is manipulated on the face of it. He has contended that a specimen verification certificate and not the verification certificate was sent to FSL. I have considered this submission and I find that it does not hold any water because FSL report is on the basis of comparison between the specimen signature and handwriting of the revisionist with questioned signatures Q13. The questioned signature Q13 appears on specimen verification certificate. Therefore, merely because the FSL report has mentioned that specimen as well as admitted handwriting of the revisionist tallied with the signature of the verification certificate, it would not take away the fact that FSL expert had compared Q13 appearing on specimen verification certificate.

10. It is further contended by Ld. Counsel for the revisionist that the revisionist could not have been charged for conspiracy as there is nothing on record to show that he had any personal acquaintance with Sayag Rachel or had taken any gratification from her. However, I find that the circumstances of the case show that the accused had issued a verification certificate, on the basis of which passport was issued to the accused and in that certificate the revisionist has verified certain details to the said Sayag Rachel, which can only be verified by a person who had personal knowledge of the facts and who is known to the person applying for passport. The next contention of the Ld. Counsel for the revisionist is that at the alleged verification certificate has been shown to be issued by the revisionist as Joint Secretary, Government of Maharashtra, whereas at the relevant time, he was not working as Joint Secretary in the Government of Maharashtra but was working as Deputy Secretary. I find that the designation which the accused was holding at the relevant time becomes immaterial for the purpose of framing of charges because the signatures that appeared on the said certificate have been found by the forensic expert to be tallying with the handwriting of the revisionist.

12. In the present case, it cannot be said that when revisionist has allegedly issued the specimen verification certificate on the basis of which Sayag Rachel had obtained the Indian passport, he was not discharging or acting or purporting an act in discharge of his duty. From perusal of the facts, it is very clear that the revisionist was working as a Joint Secretary as per the prosecution, or as a Deputy Secretary as per the revisionist himself in Department of Rural



Development and Water Conservation, Government of Maharashtra. By no stretch of imagination, it can be believed that such certificate could have been issued by the revisionist either acting or purporting to act in discharge of his official duty. As while issuing alleged certificate, the revisionist was not discharging his official duty or purporting to discharge his official duty, the protection u/s 197 Cr.PC is not available to him. Even in the judgment of **DT Virupakshappa (supra)** cited on behalf of Ld. Counsel for the revisionist, it has been clearly held that protection u/s 197 (1) Cr.PC is only available to a government servant when the act is alleged to be an offence was done by him either while discharging his duty or purporting to be discharging his duty.”

10. The present petition under Section 482 of the Cr.P.C. thus challenges two consecutive orders passed by the learned Trial Court as well as by learned ASJ. The jurisdiction of this Court under Section 482 of the Cr.P.C. in these circumstances is limited and it is the duty of the petitioner to demonstrate any illegality or pervasivity in the orders passed by the learned Courts below.

11. Learned counsel appearing on behalf of the petitioner again agitated the issue of not obtaining sanction under Section 197 of the Cr.P.C. and has placed reliance on the following judgements:-

a) State of Punjab vs. Labh Singh (2014) 16 SCC 807

b) Dr. B.M. Mohan vs. the State of Maharashtra and Anr., Karnataka High Court in criminal petition no. 988/2018 dated 02.12.2021

12. The proposition in the aforesaid judgement is that even the retired employee cannot be prosecuted in absence of sanction under Section 197 of the Cr.P.C. is not disputed. The issue in the present case is whether there was any requirement for sanction under Section 197(1) of the Cr.P.C. Section 197(1) of the 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).”

13. A perusal of the record reflects that the petitioner is sought to be prosecuted in the present case for issuing a verification certificate in favour of co-accused Sayag Rachel, on the basis of which she managed to obtain an Indian passport. The said certificate cannot in any manner be stated to be an act committed by him while acting or purporting to act in discharge of his official duty. The issuance of the said certificate, as correctly pointed out by the learned Trial Court as well as the learned ASJ was purely in his personal capacity and therefore, there is no requirement for obtaining sanction under Section 197 of the Cr.P.C.. The other contention of learned counsel appearing on behalf of the petitioner is that the signature on the said certificate is forged and does not belong to the latter, is also a matter of trial. Admittedly, an FSL report has been filed alongwith chargesheet, wherein the admitted specimen signatures of the petitioner has been compared with the signatures on the verification certificate.

14. In view of the above, this Court finds no ground to interfere with the orders passed by the learned Trial Court as well as by the learned ASJ.

15. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present petition.

16. The present petition is dismissed and disposed of.



17. Pending application(s), if any, also stands disposed of.
18. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

JANUARY 27, 2025/sn

Click here to check corrigendum, if any