HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

SINGLE BENCH

PRESENT:

HON'BLE MR. JUSTICE G.S. AHLUWALIA

Criminal Revision No.07/2012

Ashok Kumar Verma

-Vs-

State of M.P.

Shri Brijesh Sharma, counsel for the applicant.

Shri Prakhar Dhengula, Panel Lawyer for the respondent/State.

ORDER
(21/06/2017)

This Criminal Revision under Section 397,401 of CrPC has been filed against the order dated 22/09/2011 passed by IVth ASJ, Morena in ST No.376/2010 by which the Trial Court has framed charges under Sections 420 (on 2 counts), 409, 467, 468 and 471 of IPC.

The necessary facts for the disposal of the present revision in short are that a written complaint was made by SDM, Morena on 08/12/2007 alleging that the applicant, while working on the post of Superintendent, ITI, Morena, had committed serious financial irregularities and had caused financial loss to the State. It was alleged that while the applicant was working on the post of Superintendent, ITI Morena, in utter violation of the order of the superior authorities, he had illegally appointed Shri Jitendra Kadam on the post of Sweeper and had made payment of Rs.6969/- as well as the applicant had also cleared the bill of traveling outside the State, contrary to the rules. It was further alleged that although the applicant was not residing at the

headquarter but still he received the HRA from the State. Further, it was claimed by the applicant that he had given the computer training to the trainees belonging to Scheduled Tribes and had withdrawn an amount of Rs.18,900/- which was to be paid to the trainees but no computer training to the members of Scheduled Tribes was given. It was further alleged that it was claimed by the applicant that 40 wooden logs were purchased for the ITI and an amount of Rs.13,000/- was paid but in fact the logs were never received in the institution as well as irregular payment was made by the applicant during the shifting of ITI. The police, after receiving the written complaint from the SDM, Morena, registered offence under Sections 420, 467, 468, 471, 409 of IPC. After completing the investigation, the police filed the charge-sheet for offence under Sections 420, 467, 468, 471 of IPC.

The Trial Court, by order dated 22/09/2011, framed charges as mentioned above.

Being aggrieved by the order framing charges, it is submitted by the counsel for the applicant that from 07/10/2006 to 03/10/2007, the applicant was posted as In-charge Superintendent of ITI, Morena and on 31/08/2007 a complaint was made by one Nagendra Tiwari, District President, Bhartiya Janta Party, Morena making several allegations against the applicant. By order dated 01/10/2007, the applicant was placed under suspension and the information of the said suspension order was given by the Collector to the Member of Parliament, Morena Constituency by his letter dated 04/08/2007 in which the reference of letter dated 30/09/2007, written by the Member of Parliament, Morena Constituency, was made. Thus, it is submitted that it is clear that after receiving a letter from the Member of Parliament, Morena Constituency on 30/09/2007, the applicant was placed under suspension by order dated 01/10/2007. It is

further submitted that subsequently the suspension order was revoked and a departmental enquiry was conducted and in the departmental enquiry total 12 charges including the allegations in the present case were framed and in the enquiry, some of the charges were found proved and, accordingly, the Collector, by order dated 06/10/2002, imposed the punishment of stoppage of increments without cumulative effect. It is further submitted by the counsel for the applicant that as the allegations were made by the Member of Parliament, therefore, the allegations made against the applicant are malicious being political in nature. Further it is submitted that once the applicant has been found partially guilty for some of the allegations made in the present criminal case, therefore, the prosecution of the applicant would amount to double jeopardy and, ever otherwise, as the applicant is a public servant, therefore, sanction under Section 197 of CrPC for his prosecution is essential. Accordingly, it is submitted that the order dated 22/09/2011 passed by IVth ASJ, Morena in ST No.376/2010 by which charges under Section 420, 467, 468, 471, 409 of IPC have been framed, is liable to be set aside and the applicant is liable to be discharged.

Per contra, it is submitted by the counsel for the State that the Member of Parliaments are the representatives and voice of the general public. If a Member of Parliament has pointed out certain irregularities and illegalities committed by the applicant, then it cannot be presumed that the complaint was made out of malafides. It is further submitted that from the enquiry report of the Enquiry Officer given in the departmental enquiry, it is clear that the applicant was found guilty for some of the allegations. Even if the applicant is exonerated for some of the charges/allegations in the departmental enquiry, then it cannot be held that the applicant cannot be prosecuted for offences under the IPC as

exoneration in departmental enquiry or punishment in departmental enquiry would not fall within the purview of Section 300 of CrPC. It is further submitted that it is well established principle of law that committing financial irregularities are not the integral part of the official duty and, therefore, sanction for prosecution under Section 197 of CrPC was not required. It is further submitted that even otherwise this question can be decided after the recording of the evidence that whether the allegations made against the applicant had reasonable nexus with discharge of his official duties or not. It is further submitted by the counsel for the State that at the stage of framing of charges, meticulous appreciation of evidence is not required. Possibility of conviction cannot be a criteria for framing of charges. If the allegations made against the accused raises strong suspicion, then that by itself is sufficient to frame charges against the accused. It is further submitted by the counsel for the State that it is well established principle of law that the malafides of the complainant/informant are of secondary importance, if the material concluded against the person prima facie makes out an offence.

Heard the learned counsel for the parties.

So far as the question of malafide intention of the informant is concerned, it is well established principle of law that the malafides of the informant are of secondary importance. If the allegations made against the accused prima facie discloses the commission of offence, then the prosecution cannot be quashed on the ground of malafides of informant.

The Supreme Court in the case of **Renu Kumari v. Sanjay Kumar and Ors.** reported in **(2008) 12 SCC 346** has held as under:-

> "**6**. The Learned Single Judge after referring to a judgment of this Court in State of Haryana v. Bhajan Lal reported in (1992) 1 SCC (Cri) 426

held that the present case is a clear example of mala fide where the proceedings have been maliciously instituted with an ulterior motive for wreaking vengeance on the accused and within a view to spite them due to private and personal grudge. Reference has been made to the matrimonial case stating that the same was filed earlier to the lodging of the FIR.

7. In support of the appeal learned counsel for the appellant submitted that the parameters for exercise of jurisdiction under Section 482 of CrPC have not been kept in view by the learned Single Judge, further he lost sight of the fact that Matrimonial Case No. 49 of 2000 was dismissed long before the disposal of the case before the High Court. The matrimonial suit was dismissed on 12-10-2004 whereas the impugned judgment has been passed on 19-12-2005.

8. There is no appearance on behalf of the respondents in spite of service of notice.

"9. "8. Exercise of power under Section 482 Cr.P.C. in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of Cr.P.C. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under Cr.P.C., (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle of "quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest" (when the law gives a person anything, it gives him that without which it cannot exist). While exercising the powers under the section, the court does not function as a

court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In R.P. Kapur v. State of Punjab (1960 (3) SCR 388) this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. (SCR p.393)

10. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained. That is the

function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 CrPC and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335). A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows: (SCC pp.378-79, para 102)

'(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar

engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. As noted above, the powers possessed by the High Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision, in exercise of this power, is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See Dhanalakshmi v. R. Prasanna Kumar (1990 Supp SCC 686), State of Bihar v. P.P. Sharma (1992 Supp (1) SCC 222), Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995(6) SCC 194) , State of Kerala v. O.C. Kuttan (1999(2) SCC 651), State of U.P. v.

> O.P. Sharma (1996 (7) SCC 705), Rashmi Kumar v. Mahesh Kumar Bhada (1997 (2) SCC 397), Satvinder Kaur v. State (Govt. of NCT of Delhi) (1999 (8) SCC 728) and Rajesh Bajaj v. State NCT of Delhi (1999 (3) SCC 259)]."

Thus, it is clear that the malafides of the informant are of secondary importance if the material collected by the Investigating Officer prima facie discloses the commission of offence by the accused because it is the material collected by the Investigating Officer and the evidence led in the Court decides the fate of the accused. Furthermore, the only malafide which has been attributed by the applicant is that since the Member of Parliament had made certain complaints against the applicant, therefore, the FIR was lodged. Merely because the complaint was made by the Member of Parliament, it cannot be said that the complaint was politically motivated. Undisputedly, the Member of Parliament is the representative of his Constituency and it is his duty to raise the voice of the residents of his Constituency. If certain illegalities are pointed out by the Member of Parliament, then it cannot be said that the allegations were politically motivated. Furthermore, the allegations have been found to be prima facie correct and, therefore, the FIR cannot be quashed on the ground that the complaint was initially made by the Member of Parliament. Thus, the contention of the counsel for the applicant that the FIR was lodged because of the complaint made by the Member of Parliament, Morena Constituency is misconceived and is hereby rejected.

It is next contended by the counsel for the applicant that for some allegations, the applicant was exonerated in the departmental enquiry and for some allegations, he has already been punished, therefore, once he has been tried in a departmental enquiry, then he cannot be prosecuted for the similar allegations in a criminal case.

The submission made by the counsel for the applicant is

misconceived and cannot be accepted.

Section 300 of CrPC reads as under:-

> **"300. Person once convicted or acquitted not to be tried for same offence:-**(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof.
> (2) A person acquitted or convicted of any offence, may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of Section 220.
> (3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.
> (4) A person acquitted convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.
> (5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.
> (6) Nothing in this section shall affect the provisions of Section 26 of the General Clauses Act, 1897 (10 of 1897) or of Section 188 of this Code.
> **Explanation:-** The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purpose of this section."

It is submitted by the counsel for the applicant that the Supreme Court in the case of **P.S.Rajya v. State of Bihar**

reported in **(1996) 9 SCC 1** has held that once the delinquent officer/accused is exonerated in departmental proceedings on identical charges, then the applicant cannot be prosecuted in a criminal case.

Considered the submissions made by the counsel for the applicant.

The Supreme Court in the case of **State (NCT of Delhi) v. Ajay Kumar Tyagi** reported in **(2012) 9 SCC 685** while distinguishing with the decision in **P.S.Rajya (supra)** has held as under:-

> "**24**. Therefore, in our opinion, the High court quashed the prosecution on total misreading of the judgment in the case of P.S. Rajya (Supra). In fact, there are precedents, to which we have referred to above speak eloquently a contrary view i.e. exoneration in departmental proceeding ipso facto would not lead to exoneration or acquittal in a criminal case. On principle also, this view commends us. It is well settled that the standard of proof in department proceeding is lower than that of criminal prosecution. It is equally well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the criminal case can not be rejected on the basis of the evidence in the departmental proceeding or the report of the Inquiry Officer based on those evidence.
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> **25**. We are, therefore, of the opinion that the exoneration in the departmental proceeding ipso facto would not result into the quashing of the criminal prosecution. We hasten to add, however, that if the prosecution against an accused is solely based on a finding in a proceeding and that finding is set aside by the superior authority in the hierarchy, the very foundation goes and the prosecution may be quashed. But that principle will not apply in the case of the departmental proceeding as the criminal trial and the departmental proceeding are held by two different entities. Further they are not in the same hierarchy."

This Court in the case of **Ravi Prakash Singh v. State of M.P. and Anr.**, by order dated **08/05/2017** passed in

MCRC No.13248/2016 has held as under:-

> "So far as the fact that the applicant has already been held guilty in a departmental enquiry is concerned, it is clear that the applicant cannot take advantage of the said finding given in the departmental enquiry because it cannot be said that the applicant was tried and acquitted or convicted for the same offence"

Thus, it is clear that exoneration in departmental enquiry is of no consequences so far as the prosecution of the delinquent officer for offences in a criminal trial is concerned.

Thus, the submission made by the counsel for the applicant that since he has been exonerated in departmental enquiry for some of the charges and has been partially punished for some of the charges, therefore, the criminal trial of the applicant amounts to double jeopardy is misconceived and contrary to law and, accordingly, it is rejected.

It is further submitted by the counsel for the applicant that the allegations made against the applicant are with regard to certain acts which have been performed by the applicant in the capacity of a public servant, therefore, sanction under Section 197 of CrPC is necessary.

In support of his contention, the counsel for the applicant has relied upon the judgments of Supreme Court in the case of **Sankaran Moitra v. Sadhna Das & Anr.** reported in **AIR 2006 SC 1599** and **Abdul Wahab Ansari** reported in **(2000) 8 SCC 500**.

In the case of **Sankaran Moitra (supra)**, the allegations against the accused was that he was officer-in-charge of a police station on duty to prevent any breach of law and maintain order on polling date. The allegations were that the deceased was beaten to death by police constable on the date of election at the instance of the accused. By referring to the facts of this case, it was held by the Supreme Court as under:-

"**71**. Coming to the facts of this case, the question is whether the appellant was acting in his official capacity while the alleged offence was committed or was performing a duty in his capacity as a police officer which led to the offence complained of. That it was the day of election to the State Assembly, that the appellant was in uniform; that the appellant traveled in an official jeep to the spot, near a polling booth and the offence was committed while he was on the spot, may not by themselves attract Section 197 (1) of the Code. But, as can be seen from the facts disclosed in the counter affidavit filed on behalf of the State based on the entries in the General Diary of the Phoolbagan Police Station, it emerges that on the election day information was received in the Police Station at 1400 hours of some disturbance at a polling booth, that it took a violent turn and clashes between the supporters of two political parties was imminent. It was then that the appellant reached the site of the incident in his official vehicle. It is seen that a case had been registered on the basis of the incidents that took place and a report in this behalf had also been sent to the superiors by the Station House Officer. It is also seen and it is supported by the witnesses examined by the Chief Judicial Magistrate while taking cognizance of the offence that the appellant on reaching the spot had a discussion with the Officer-in-charge who was stationed at the spot and thereafter a lathi charge took place or there was an attack on the husband of the complainant and he met with his death. Obviously, it was part of the duty of the appellant to prevent any breach of law and maintain order on the polling day or to prevent the blocking of voters or prevent what has come to be known as booth capturing. It therefore emerges that the act was done while the officer was performing his duty. That the incident took place near a polling booth on an election day has also to be taken note of. The complainant no doubt has a case that it was a case of the deceased being picked and chosen for illtreatment and he was beaten up by a police constable at the instance of the appellant and the Officer-in- charge of the Phoolbagan Police Station and at their behest. If that complaint were true it will certainly make the action, an offence, leading to further consequences. It is also true as pointed out by the learned counsel for the complainant that the entries in the General Diary remain to be proved. But still, it would be an offence committed during the course of the performance of his duty by the

> appellant and it would attract Section 197 of the Code. Going by the principle, stated by the Constitution Bench in Matajog Dobey (supra), it has to be held that a sanction under Section 197 (1) of the Code of Criminal Procedure is necessary in this case.
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> **71A**. We may in this context notice the decision in Rizwan Ahmed Javed Shaikh & Ors. v. Jammal Patel & Ors. [(2001) 5 SCC 7). This Court was dealing with officers who were brought within the protective umbrella of Section 197 of the Code by a notification issued under Section 197(3) thereof. Cognizance had been taken of an offence under Sections 220 and 342 of the Indian Penal Code and Sections 147 and 148 of the Bombay Police Act. The gravamen of the charge was the failure on the part of the accused police officers to produce the complainants before a magistrate within 24 hrs. of their arrest for alleged offences under the Indian Penal Code. The police officers having claimed the protection of Section 197(1) of the Code, this Court after referring to the earlier decisions held"
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> "The real test to be applied to attract the applicability of Section 197(3) is whether the act which is done by a public officer and is alleged to constitute an offence was done by the public officer whilst acting in his official capacity though what he did was neither his duty nor his right to do as such public officer. The act complained of may be in exercise of the duty or in the absence of such duty or in dereliction of the duty, if the act complained of is done while acting as a public officer and in the course of the same transaction in which the official duty was performed or purported to be performed, the public officer would be protected."

In the case of **Abdul Wahab Ansari (Supra)**, the allegations were that the appellant was appointed as Deputy Magistrate for removing the encroachment and he was able to partially remove the encroachment and when the encroachment drive was going on, some miscreants armed with weapon started hurling stones and as the situation went out of control, after due warning the applicant was compelled to give order to open fire and disbursed the mob. On account of such firing, one of the persons died and two others injured and a report was accordingly sent by the appellant to his senior officers. Under the facts and circumstances of the said

case, it was held by the Supreme Court that as the applicant was discharging his official duty, therefore, the sanction under Section 197 (1) of CrPC before taking of cognizance was necessary. However, in the present case, the facts are different.

The Supreme Court in the case of **State of U.P. v. Paras Nath Singh** reported in **(2009) 6 SCC 372** had held as under:-

> "**6.** 10. Prior to examining whether the Courts below committed any error of law in discharging the accused it may not be out of place to examine the nature of power exercised by the Court under Section 197 of the Code and the extent of protection it affords to public servant, who apart, from various hazards in discharge of their duties, in absence of a provision like the one may be exposed to vexatious prosecutions. Section 197(1) and (2) of the Code reads as under:
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> "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 -
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> (a) in the case of 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.
>
> xxx xxx xxx
>
> (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."
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> The Section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is if the conditions mentioned are not made out or are absent then no prosecution can be set

into motion. For instance no prosecution can be initiated in a Court Sessions under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or the Code expressly provides for it and the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The Section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint cannot be taken notice of. According to Black's law Dictionary the word 'cognizance' means 'Jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty.

11. Such being the nature of the provision the question is how should the expression, 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', be understood? What does it mean? 'Official' according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In B. Saha and Ors. v. M. S. Kochar (1979 (4) SCC 177) it was held :(SCC pp. 184-85 para 17)

"17.The words 'any offence alleged to have been committed by him while acting or purporting

> to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an Act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution and the said provision."
> Use of the expression`official duty' implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or mission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.""

The Supreme Court in the case of **Prakash Singh Badal v. State of Punjab** reported in **(2007) 1 SCC 1**, it has been held as under:-

> "**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."

In the case of **Raghunath Anant Govilkar v. State of Maharashtra & Ors.** reported in **(2008) 11 SCC 289**, it has been held as under:-

> "**7.** "*5*. The pivotal issue i.e. applicability of Section 197 Cr.P.C. needs careful consideration. In Bakhshish Singh Brar v. Gurmej Kaur (1987 (4) SCC 663), this Court while emphasizing on the balance between protection to the officers and the protection to the citizens observed as follows:

(SCC p. 667, para 6)

'6. … It is necessary to protect the public servants in the discharge of their duties#.In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding cut as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that Section (sic197) states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence.'

6. The protection given under Section 197 Cr.P.C. is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or adequate protection to public servants to ensure that they are not prosecuted for anything done by them, in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if it chooses to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 Cr.P.C. can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official

capacity. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of the section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty: if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 Cr.P.C. does not get immediately attracted on institution of the complaint case.

7. At this juncture, we may refer to P. Arulswami v. State of Madras (1967) 1 SCR 201, wherein this Court held as under : (AIR p. 778, para 6)

'6. … It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable.'

8. It would be appropriate to examine the nature of power exercised by the Court under

Section 197 Cr.P.C. and the extent of protection it affords to public servants, who, apart from various hazards in discharge of their duties, in the absence of a provision like the one mentioned, may be exposed to vexatious prosecutions. Sections 197(1) and (2) of the Code and 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-

(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:

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(2) No court shall take cognizance of any offence alleged to have been committed by arty 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.'

9. The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is, if the conditions mentioned are not made out or are absent, then no prosecution can be set in motion. For instance, no prosecution can be initiated in a Court of Session under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or unless the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the

official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression "no court shall take cognizance of such offence except with the previous sanction". Use of the words 'no' and 'shall' make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word "cognizance" means 'jurisdiction' or "the exercise of jurisdiction" or power to try and determine causes'. In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during the discharge of his official duty.

10. Such being the nature of the provision the question is how should the expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" be understood? What does it mean? '"Official act" or "official duty" means an act or duty done by an officer in his official capacity. In B. Saha v. M.S Kocha (1979 (4) SCC 177) it was held (SCC pp.184-85, para 17)

'17. The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty employed in Section 197(l) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said

provision.' (emphasis in original)

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

12. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty; that is under the colour of office. Official duty, therefore, implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in the discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that an act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in the discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in the course of service but not in the discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in the discharge of his duty can be deemed to be official was explained by this Court in Matajog Dobey v. H.C. Bhari (AIR p. 49, paras 17 & 19).

'17. … The offence alleged to have been committed (by the accused) must have something

to do, or must be related in some manner, with the discharge of official duty. ...

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19. … 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 (claim), but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.'

13. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official, to which applicability of Section 197 of the Code cannot be disputed.

14. In S.A. Venkataraman v. State (1958 SCR 1040), this Court has held: (AIR p. 111, para 14)

'14. … There is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the court was asked to take cognizance, although he had been such a person at the time the offence was committed.'

15. The above position was illuminatingly highlighted in State of Maharashtra v. Dr. Budhikota Subbarao (1993 (3) SCC 339).

16. When the newly worded section appeared in the Code (Section 197) with the words, 'when any person who is or was a Judge or Magistrate or a public servant' (as against the truncated expression in the corresponding provision of the old Code of Criminal Procedure, 1898) a contention was raised before this Court in Kalicharan Mahapatra v. State of Orissa (1998 (6) SCC 411) that the legal position must be treated as changed even in regard to offences under the old Act and new Act also. The said contention was, however, repelled by this Court wherein a two-Judge Bench has held thus:

'14. … A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 197 of the Act if he continues to be a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time, the court can take cognizance of the offence without any such sanction.'

17. The correct legal position, therefore, is

that an accused facing prosecution for offences under the old Act or new Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. But the position is different in cases where Section 197 of the Code has application.

18. Section 197(l) provides that when any person who is or was a public servant not removable from his office save by or with the sanction of the 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 of, 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, and (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, or the State Government.

19. We may mention that the Law Commission in its 41st Report in para 15.123 while dealing with Section 197, as it then stood, observed:

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

It was in pursuance of this observation that the expression "was" came to be employed after the expression "is" to make the need for sanction applicable even in cases where a retired public servant is sought to be prosecuted

The above position was highlighted in R. Balakrishna Pillai v. State of Kerala (1996 (1) SCC 478), State of H.P. v. M.P. Gupta (2004 (2) SCC 349), State of Orissa v. Ganesh Chandra Jew (2004 (8) SCC 40), S.K. Zutshi v. Bimal Debnath (2004 (8) SCC 31) and Rakesh Kumar Mishra v.

State of Bihar and others (2006 (1) SCC 557)."

Thus, it is clear that the allegations of fraudulent withdrawal of an amount of Rs.18,900/- in the name of giving computer training to 54 trainees belonging to the Scheduled Tribes as well as the allegation of purchasing 40 pieces of wooden log whereas these logs were never purchased and a withdrawal of Rs.13,000/- under the said head cannot be said to be an act having reasonable nexus with his official duty. Similarly, the allegations of illegal appointment of Jitendra Kadam contrary to the instructions of superior officers as well as the payment of bills to the extent of Rs.3,279/- in respect of traveling undertaken out of the limits of the State and a receipt of an amount of Rs.3,912/- by way of HRA although the applicant was not residing at the headquarter and the misappropriation of an amount of Rs.15,900/- under the head of shifting of ITI cannot be said to be an act having reasonable nexus with the discharge of his duties.

Section 197 of CrPC 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-
>
> (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.]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression" Central Government" occurring therein, the expression" State Government" were substituted.

'[(3A) 1 Notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 , 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."

Accordingly, it is held that as the allegations which have

been alleged against the applicant have no reasonable nexus with discharge of his duty, therefore, no sanction under Section 197 of CrPC was required for prosecution. The act committed by the applicant cannot be said to have been committed by him while acting or purporting to act in the discharge of his official duty.

No other submissions have been made by the counsel for the applicant.

Considering the totality of the circumstances, this Court does not find it to be a fit case for interfering with the order dated 22/09/2011 passed by IVth ASJ, Morena in ST No.376/2010.

By way of abandoned caution, it is observed that as the matter was argued by the counsel for the applicant in detail and in order to consider the submissions made by the applicant, this Court was required to make certain observations. However, it is clarified that these observations have been made considering the limited scope of interference at the stage of framing of charges. The Trial Court must not get prejudiced by any of the observation made by this Court while deciding the trial on merits. The Trial has to be decided strictly in accordance with the evidence, tested by cross-examination, which would ultimately come on record during the trial.

This revision was filed against the order dated 22/09/2011 and by order dated 06/01/2012, this Court had stayed the further proceedings in Sessions Trial No.376/2012. Thus, it is clear that more than five years have passed and in view of the interim order passed by this Court, no proceedings could have been taken place before the Trial Court. As the allegations are of the year 2006 and 2007, it is directed that the Trial Court shall make every endeavor to conclude the trial within a period of 1½ years from the date of receipt of copy of

this order.

It is further made clear that as the revision has been dismissed on merits, therefore, the interim order dated 06/01/2012 has also lost its effect. The record of the Trial Court was also requisitioned by this Court by order dated 20/02/2017.

The office is directed to immediately send the record of the Trial Court back.

This revision fails and is accordingly **dismissed**.

A copy of this order be also sent to the Trial Court for necessary information and compliance.

(G.S. AHLUWALIA)
Judge

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