

**HIGH COURT OF MADHYA PRADESH**

**BENCH AT GWALIOR**

**DB: MR. SANJAY YADAV & MR. RAJEEV KUMAR**  
**SHRIVASTAVA,JJ.**

**Misc. Cri.Case No. 19218/2017**

Kamal Kishore Sharma

**Versus**

State of Madhya Pradesh

Through Police Station

State Economic Offence

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Shri Jitendra Sharma, learned counsel for the petitioner.  
Shri Sushil Chandra Chaturvedi, learned Special Public Prosecutor  
for the respondent.  
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**ORDER**  
**(06.09.2019)**

**Per Rajeev Kumar Shrivastava,J.:**

This petition under Section 482 of Cr.P.C. has been preferred by petitioner Kamal Kishore Sharma, Sub-Engineer, Urban Administration Development Department, seeking quashment of FIR registered at Crime No.40/1996 under Sections 120-B and 420 of IPC read with Section 13 (1) (d) & 13 (2) of the Prevention of Corruption Act, 1988 (for brevity, the 'PC Act'), registered by State Economic Offence Investigation Bureau, Bhopal, the proceedings of which are pending before the Court of Special Judge (under PC Act), Morena in Special Trial No.02/2002.

2. In the present petition, the petitioner has sought for the following relief :-

“It is, therefore, most respectfully prayed that the present petition filed by the petitioner may kindly be allowed and the impugned F.I.R. contained in Annexure – P/1 and further criminal proceedings

thereof vide Special Case No. 02/02 pending before the Court of Special Judge (under PC Act), Morena may kindly be quashed, in the interest of justice.”

3. It is pertinent to mention here that the FIR was registered against the petitioner for the offence punishable under Sections 120-B and 420 of IPC read with Section 13 (1) (d) & 13 (2) of the PC Act, however vide order dated 7.5.2012 the Special Judge (under PC Act) Morena has framed the charge against the petitioner for the offence punishable under Sections 120-B, 465 and 471 of IPC and discharged the petitioner from the charge under Sections 13(1)(d) and 13 (2) of the PC Act.

4. The facts in short are that the respondent registered Crime No. 40/96 against the petitioner and six other persons for the offences punishable under Sections 420, 120-B of IPC read with Section 13(1)(d) and 13(2) of the PC Act, alleging therein that the petitioner along with other accused persons made conspiracy and allotted 2260 sq. ft. part of the land bearing survey No. 429 and 430-B to the officers and employees of the Municipality, Morena at the rate of Rs.10/- per sq.ft., whereas the aforesaid land was in possession of Municipal Council, Morena and rest of the land was in the ownership of Commissioner, Ayakat (State Government) and as per the Collector's guidelines, the rate of the said land was Rs.90/- per sq.ft. It is further alleged that present petitioner and other co-accused persons, namely A.K.Bansal, A.K.Verma and Vinay Kumar Gupta had filed affidavit to the effect that they are not possessing any other plot whereas these four accused persons were already having other plots. It was also alleged that by the aforesaid act the petitioner and other co-accused persons have caused loss to the Government to the tune of Rs.18.00 Lakhs.

After due investigation, the respondent has filed charge-sheet in the Court of Special Judge (under PC Act), Morena. The Special Judge though exonerated the petitioner from the charge of Section 13(1)(d) and 13(2) of the PC Act, framed the charge under Section 120-B, 465, 471 of IPC against him vide order dated 7.5.2012. Feeling aggrieved thereby the petitioner has filed the present petition under Section 482 of CrPC, praying therein for quashing the FIR (Annexure P/1) and further criminal proceedings flowing from the said FIR pending before the Court of Special Judge (under PC Act), Morena in Special Case No. 02/2002.

5. Learned counsel for the petitioner submitted that registration of FIR and continuation of criminal proceedings in pursuance thereof is ex facie illegal and amounts to abuse of process of law. From the allegations in the FIR, no offence either under Sections 465 and 475 or under Section 120-B of IPC is made out against the petitioner. Learned counsel has contended that whatever the petitioner had done, it was in discharge of his official duties and in compliance of his superior officer. The petitioner was earlier employee of Town Improvement Trust which was subsequently merged in Municipal Council Morena, therefore the petitioner became employee within the purview of Section 94(4) of the Municipalities Act, 1961, according to which the employee could neither be appointed nor removed from service without prior approval of the State Government and for this purpose the Department of Urban Administration and Development, State of Madhya Pradesh is the Competent Authority. Therefore, the sanction granted by the Department of Law & Legislature cannot be termed as proper sanction under Section 197 of CrPC and, therefore, continuation of petitioner's

prosecution for want of proper sanction is illegal and contrary to law. It is further contended that no loss is caused to the Government, rather the proposed allottees of the plots, who are employees and officers of the department suffered loss as they have purchased stamps etc. and due to pendency of criminal trial for a long period the petitioner has been deprived from getting fruits of promotion and other benefits. Hence, he prays for quashment of the FIR as well as criminal proceedings pending against the petitioner.

6. Per Contra, learned Special Public Prosecutor appearing for the respondent has supported the order and submitted that looking to the allegations against the petitioner and gravity of the offence, no case is made out warranting interference by this Court in exercise of jurisdiction under Section 482 of CrPC.

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

8. Section 197 of the Code of Criminal Procedure reads as follows :

“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—

(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;

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- (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, 5 [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB] or section 509 of the Indian Penal Code (45 of 1860).

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

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

(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the

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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.”

9. It is very clear from the above provision that this section is attracted only in cases where the public servant is such who is not removable from his office save by or with the sanction of the Government. It is not disputed that the applicant is not holding a post where he could not be removed from service except by or with the sanction of the government.

10. In **N.K. Ganguly Vs. Central Bureau of Investigation (2016) 2 SCC 143**, the Hon'ble Apex Court has observed as

under:-

*“35. From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate Government under Section 197 Cr.P.C , it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to examine the allegations contained in the final report against the appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate Government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegations made against the appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 Cr.P.C. was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence.”*

11. The word “public servant” has not been defined in the Cr.P.C., but Section 2(y) of the Cr.P.C. provides that the words and expression used in the Cr.P.C. and not defined but defined in the Indian Penal Code have the same meanings respectively assigned to them in that Code. “Public Servant” is defined in Section 21 of the Indian Penal Code, which for the sake of convenience is being reproduced below:-

“21. "Public servant".--The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:--

First.-- \* \* \* \* \*

Second.--Every Commissioned Officer in the

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- Military, Naval or Air Forces of India;
- Third.-- Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
- Fourth.-- Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;
- Fifth.-- Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;
- Sixth.-- Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;
- Seventh.-- Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
- Eighth.-- Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
- Ninth.-- Every officer whose duty it is as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the



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Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

Tenth.-- Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh.--Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth.--Every person--

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).”

**12.** Thus, the State Government satisfies the requirement of competent authority under Section 19(1)(c) of the PC Act and being an authority superior to the Municipal Council is having powers of validating an appointment made under Section 94 of the M.P. Municipalities Act and therefore being an appointing authority in terms of law laid down in State of **T.N. vs. T. Thulasingham and others**, reported in [1994 Supp. (2) SCC 405], the State Government partakes as the authority competent to remove the petitioner from the post satisfying the requirement of Section 19(1)(c) of the PC Act.

**13.** So far as the ground taken by the petitioner that the sanction for prosecution has been granted by the incompetent authority is concerned, the record shows that sanction has been granted by Department of Law & Legislative Affairs, Bhopal, State of Madhya Pradesh. Section 19(1)(c) of the PC Act provides a provision regarding prior sanction for prosecution from an authority competent to remove a public servant from his office. The trial Court has rightly overruled this objection taking support from Section 94 of the M.P. Municipalities Act, 1961 and held that since every appointment made by the Municipal Council is subject to approval by the State Government, the State Government has thus final and substantial role to play in the process of appointment and removal of the petitioner from the service.

**14.** In this view of the matter, no fault can be found with the order of sanction for prosecution issued by the State Government.

**15.** As far as the argument on merits is concerned, the prosecution has alleged conspiracy and forgery against the petitioner. It is alleged that the land in question was proposed to be allotted at a highly depressed rate of Rs.10/- per sq.ft. It is further alleged that the land was wrongly mentioned as not required for stadium. In this regard, the prosecution has brought on record guidelines issued by the Collector, Morena for the year 1994-95 which prescribes Rs.90/- per sq.ft., as rate of land in the area in question. Thus, it is apparent that the material brought on record by the prosecution prima facie indicates a strong suspicion of the offence of conspiracy and forgery punishable under Sections 120-B, 465 and 471 of IPC against the petitioner.

**16.** In **Raghubir Sharan v. State of Bihar**, [AIR 1964 SC 1], the Hon'ble Supreme Court held as under:-

*“When we speak of the inherent powers of the High Court of a State we mean the powers which must, by reason of its being the highest court in the State having general jurisdiction over civil and criminal courts in the State, inhere in that court. The powers in a sense are an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of Justice. When we speak of ends of justice we do not use the expression to comprise within it any vague or nebulous concept of justice, nor even justice in the philosophical sense but justice according to law, the statute law and the common law. Again, this power is not exercisable every time the High Court finds that there has been a miscarriage of justice. For, the procedural laws of the State provide for correction of most of the errors of subordinate courts which may have resulted in miscarriage of justice. These errors can be corrected only by resorting to the procedure prescribed by law and not otherwise. Inherent powers are in the nature of extraordinary powers available only where no express power is available to the High Court to do a particular thing and where its express powers do not negative the existence of such inherent power. The further condition for its exercise, in so far as cases arising out of the exercise by the subordinate courts of their criminal jurisdiction are concerned, is that it must be necessary to resort to it for giving effect to an order under the Code of Criminal Procedure or for preventing an abuse of the process of the court or for otherwise securing the ends of justice.*

*The power to expunge remarks is no doubt an extraordinary power but nevertheless it does exist for redressing a kind of grievance for which the statute provides no remedy in express terms. The fact that the statute recognizes that the High Courts are not confined to the exercise of powers expressly conferred by it and may continue to*

*exercise their inherent powers makes three things clear. One, that extraordinary situations may call for the exercise of extraordinary powers. Second, that the High Courts have inherent power to secure the ends of justice. Third, that the express provisions of the Code of do not affect that power. The precise powers which inhere in the High Court are deliberately not defined by s. 561- A for good reason. It is obviously not possible to attempt to define the variety of circumstances which will call for their exercise. No doubt, this section confers no new power but it does recognise the general power to do that which is necessary "to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." But then, the statute does not say that the inherent power recognised is only such as has been exercised in the past either. What it says is that the High Courts always had such inherent power and that this power has not been taken away. Whenever in a criminal matter a question arises for consideration whether in particular circumstances the High Court has power to make a particular kind of order in the absence of express provision in the Code or other statute the test to be applied would be whether it is necessary to do so to give effect to an order under the Code or to prevent the abuse of the process of the court or otherwise to secure the ends of justice."*

**17. In the case of Colgate Palmolive India Ltd. vs. Satish Rohra, 2005 (4) MPLJ 380, it has been held thus:-**

*"6. I have heard the learned Counsel of both the parties and carefully perused the evidence and the material on record. Before considering the evidence and the material on record for the limited purpose of finding out whether a prima facie case for issuance of process has been made out or not, it may be mentioned at the very outset that the various documents and the reports filed by the petitioners/Company along with the petition can not*

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*be looked into at the stage of taking cognizance or at the stage of framing of the charge. The question whether prima facie case is made out or not has to be decided purely from the point of view of the complainant without at all advert to any defence that the accused may have. No provision in the Code of Criminal Procedure grants to the accused any right to file any material or document at the stage of taking cognizance or even at the stage of framing of the charge in order to thwart it. That right is granted only at the stage of trial. At this preliminary stage the material produced by the complainant alone is to be considered."*

**18.** It has been observed by the Hon'ble Apex Court in **Madhu Limaye V. State of Maharashtra, [(1977) 4 SCC 551]** as under:-

*"The High Court possessed and possess the inherent powers to be exercised ex debito justitiae to do the real and the substantial justice for the administration of which alone Courts exist.*

*At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions:*

- (1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;*
- (2) That it should be exercised very sparingly to prevent abuse of process of any Court otherwise to secure the ends of justice;*
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code*

The inherent power under Section 482 is intended to prevent the abuse of the process of the Court and to secure ends of justice. Such

power cannot be exercised to do something which is expressly barred under the Code.”

19. The question is whether at this stage this Court can examine the documents and conduct a mini trial simultaneously. This aspect is no more *res integra*. The Apex Court in **Amit Kapoor vs. Ramesh Chander [(2012) 9 SCC 460]**, has held that where the factual foundation for an offence has been laid, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence. In the said case, the Apex Court laid down the relevant parameters, on the strength of which interference under Section 482 CrPC can be made. The said principles are as under:-

1. *Though there are no limits of the powers of the Court under Section 482 CrPC but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 CrPC should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.*
2. *The court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.*
3. *The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*

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4. *Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.*
5. *Where there is an express legal bar enacted in any of the provisions of CrPC or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.*
6. *The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.*
7. *The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.*
8. *Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained. It may be purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence constituting both on the same set of facts. But if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the court will not either dismiss a complaint or quash such proceedings in exercise of its inherent or original jurisdiction.*
9. *Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a civil wrong with no element of criminality and does not satisfy the basic ingredients of a criminal offence, the court may*

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- be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.*
10. *Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.*
  11. *It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.*
  12. *In exercise of its jurisdiction under Section 228 and/or under Section 482, the court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The court has to consider the record and documents annexed with by the prosecution.*
  13. *Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.*
  14. *Where the charge-sheet, report under Section 173(2)CrPC, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.*
  15. *Coupled with any or all of the above, where the court finds that it would amount to abuse of process of CrPC or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to*



*do real and substantial justice for  
administration of which alone, the courts exist."*

As per the provision of law which flows from the judgment in *Amit Kapoor (supra)*, it is clear that at the stage, at which the present case is, the court should not examine the facts, evidence and material on record to determine whether there is sufficient material, which may end in a conviction. The court is only concerned with the allegations taken as a whole whether they will constitute an offence. Similarly, under section 482 CrPC the court cannot take into consideration external materials given by an accused for arriving to a conclusion that no offence was disclosed or there was possibility of his acquittal. Whether mens rea behind the PC Act of forgery is present or not cannot be decided at this early stage and is best to be left to be adjudicated by the Trial Court after marshalling of evidence.

**20.** In view of the aforesaid discussion, looking to the offences charged against the petitioner, we are of the considered view that no ground is made out for quashing the FIR or the proceeding pending before the Court of Special Judge (under PC Act). The petition under Section 482 of CrPC sans substance and is hereby dismissed. We, however, make it clear that we have not expressed any opinion on the merits of the case. Any observation which has been divulged with touching the merits of the case be ignored by the trial Court.

(yog)

**(Sanjay Yadav)**  
**Judge**

**(Rajeev Kumar Shrivastava)**  
**Judge**