# THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

## M.Cr.C. No.14484 of 2012

(J.B.S. Chandel **Vs.** State of M.P.)

## M.Cr.C. No.4368 of 2013

(J.B.S. Chandel and others **Vs.** State of Madhya Pradesh and another)

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## M.Cr.C. No.34749 of 2019

(Arvind Dubey and another **Vs.** State of Madhya Pradesh and another)

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| Date of Order | 14.01.2022 |
| Bench Constituted | Single Bench |
| Order delivered by | Hon'ble Shri Justice Sanjay Dwivedi, J. |
| Whether approved for reporting | **Yes** |
| Name of counsels for the parties | For Petitioners : Shri Manish Datt, Senior Advocate with Shri Sameer Agrawal, Advocate.<br><br>For Respondent No.1/State : Shri Devendra Gangrade, Panel Lawyer.<br><br>For respondent No.2: Shri R.P. Mishra, Advocate. |
| Law laid down | The object of giving protection under Section 197 of the Code of Criminal Procedure--<br><br>To take sanction for initiating prosecution against public servant for protecting them from needless harassment so as to render protective assurance to honest officer to perform public duty |

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| | honestly and to best of their abilities because threat of prosecution demoralises the honest officer.<br><br>Real test to determine applicability of Section 197 of Cr.C.P. and obtaining sanction from the Government are:-<br><br>(i) That the accused must be a public servant and can be removed from his office only with the sanction of the State Government or the Central Government;<br><br>(ii) He must be an accused of an offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty.<br><br>If required parameters are fulfilled then previous sanction of the competent authority to initiate prosecution against a public servant is a pre-requisite condition. |
| Significant Paragraphs | 25, 26, 29 and 30 |

**Reserved on : 24.11.2021**
**Delivered on : 14.01.2022**

**O R D E R**
**(14.01.2022)**

Considering the facts and circumstances of these petitions and the issue involved in the same since interconnected with each other, therefore, all these

petitions are heard and decided analogously by this common order.

These petitions have been filed by the petitioners under Section 482 of the Code of Criminal Procedure for quashing of the entire proceedings pending in the Court of First Additional Sessions Judge, Shahdol vide S.T. No.184/2012 and also for quashing the order dated 08.03.2013 passed by the said Court framing charges against the petitioners under Sections 302, 120-B read with Section 34 of the Indian Penal Code and also order dated 08.11.2012 passed by the First Additional Sessions Judge, Shahdol whereby the application filed by the petitioners under Section 197 of the Code of Criminal Procedure has been rejected.

**2.** Laconic facts of the case are that respondent No.2 had filed a complaint in the Court of Chief Judicial Magistrate, Shahdol *inter alia* on the ground that her son Rajkumar @ Chhota Gudda was on the way to his sister's house on 29.11.2006 along with his friend Bhupendra Sharma and when they were crossing the Mudna river, the petitioners along with other subordinate police personnel intercepted them and on the order of the petitioners, the police personnel shot fire upon

Chhota Gudda, resultantly, he succumbed. As per the complainant/respondent No.2, to cover-up their wrongdoings, the petitioners and other police personnel converted the story by faking it as an encounter, but in fact they have murdered the son of respondent No.2/complainant.

(2.1) The complainant filed a complaint under Section 200 of Code of Criminal Procedure praying for initiation of appropriate proceedings against the petitioners and other accused persons for the offence punishable under Sections 302, 120-B read with Section 34 and 149 of Indian Penal Code.

(2.2) Thereafter, the statements of complainant/ respondent No.2 and other witnesses were recorded and after recording the statements, CJM, Shahdol dismissed the complaint vide order dated 04.03.2010 *inter alia* on the ground that the petitioners and other accused persons are government servants and their alleged conduct comes within the parameters of discharge of their official duties. The trial Court in its order has held that before filing the

complaint, no sanction under Section 197 Cr.P.C. has been obtained by the complainant/respondent No.2, which is a mandatory requirement and in absence of valid sanction from the competent authority, the petitioners cannot be prosecuted.

(2.3) Against the order passed by the CJM, Shahdol, a criminal revision was filed before the Sessions Court, Shahdol and the Additional Sessions Judge by its order dated 17.05.2010 allowed the revision and remanded the matter back to the Court of CJM directing that the complainant be heard afresh and then appropriate order be passed. Thereafter, the order passed by the Additional Sessions Judge on 17.05.2010 was assailed by the petitioners by filing a revision before this Court which got dismissed vide order dated 13.12.2010.

(2.4) Thereafter, an enquiry was conducted and the Magistrate vide order dated 20.01.2011 directed for registration of offence under Sections 302/34 and 120-B of IPC against the

petitioners. Hence, these petitions have been filed challenging the order dated 20.01.2011 and also seeking quashment of the proceedings.

(2.5) The complainant/respondent No.2 represented the matter to various authorities asking proper inquiry and on her representation, the matter was referred for Magisterial enquiry. The National Human Rights Commission has also conducted an inquiry at their own level, in which allegation of murder against the present petitioners was found incorrect and no substance was found in the complaint made by the complainant/respondent No.2 (mother of the deceased). In the inquiry conducted by the Magistrate, several witnesses were examined and after appreciating the statements and material collected during the course of inquiry, a report was submitted, which reveals that an information was conveyed by the informant about the location of absconding criminal Chhota Gudda on 29.11.2006, therefore, police team was

formed in two groups and after reaching the spot, they encircled the deceased and he was asked to surrender, but he started unbridled fire and not only the deceased but his accomplice also fired upon the police team. Resultantly, in self-defence the police also opened fire and in the cross-firing deceased Chhota Gudda sustained injuries, due to which he died whereas other associates ran away from the spot. The Magistrate while conducting an inquiry also examined the medical evidence and took an opinion from the expert sending collected material to FSL and finally arrived at conclusion that the allegation regarding murder of deceased Chhota Gudda by the police was not correct and the said encounter cannot be considered to be illegal, paradoxically it was found genuine. Considering the report of the Magistrate, the National Human Rights Commission also thwarted the inquiry by approving the report of the Magistrate.

**3.** Learned senior counsel for the petitioners has

drawn attention of this Court towards the report of Magisterial enquiry and also the opinion of the National Human Rights Commission and submitted that the son of the complainant/respondent No.2 was convicted for an offence punishable under Section 302/34 of IPC and Section 25 & 27 of the Arms Act registered vide Crime No.442/1994 and in a Sessions Trial No.3/1995, the First Additional Sessions Judge awarded sentence for life to the deceased (son of the complainant). The deceased was in jail since 07.03.1998. Although, he was released on parole for a period from 28.10.2005 to 21.11.2005, but thereafter, he did not surrender and remained absconded. He submits that an order of arrest was also passed against the deceased. He further submits that the petitioners and their subordinate police personnel received an information about the son of the complainant/respondent No.2 and therefore, they intercepted him. He submits that the petitioners are government servants and they cannot be prosecuted without taking sanction under Section 197 of the Cr.P.C. In fact, there is no absolute material available for constituting offence under Sections 302, 120-B read with Section 34 and 149 of Indian Penal Code against the

petitioners. He further submits that sanction under Section 197 of Cr.P.C. is required for initiation of criminal proceedings and to proceed further with the matter. Counsel for the petitioners has submitted that there were several weapons seized from the spot viz. .315 bore Katta, 1 revolver .38, 18 live cartridges of 12 bore, 2 span cartridges, 8 live cartridges 315 bore, 5 cartridges of 315 bore and as per the report those cartridges were used in the weapons seized from the spot. In support of his submission that the petitioners being police officers committed alleged act while discharging their official duties therefore, cannot be prosecuted that too when sanction under Section 197 of Cr.P.C has not been obtained, has relied upon the following decisions of the Supreme Court :-

**(2016) 6 SCC 734 (Amal Kumar Jha v. State of Chhattisgarh and another), (1997) 5 SCC 326 (Shambhoo Nath Misra v. State of U.P. and others), (1997) 10 SCC 772 (State through the CBI v. B.L. Verma and another), (1998) 1 SCC 205 (Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan and others), (2000) 8 SCC 500 (Abdul Wahab Ansari v. State of Bihar and another), (2001) 6 SCC 704 (P.K.**

**Pradhan v. State of Sikkim represented by the Central Bureau of Investigation), (1998) 5 SCC 91 (Mohd. Hadi Raja v. State of Bihar and another), (2000) 5 SCC 15 (Gauri Shankar Prasad v. State of Bihar and another), (1998) 5 SCC 690 (State of Bihar v. Kamla Prasad Singh and others), (2001) 5 SCC 7 (Rizwan Ahmed Javed Shaikh and others v Jammal Patel and others), (2005) 4 SCC 512 (K. Kalimuthu v. State by DSP), (2005) 8 SCC 202 (Centre for Public Interest Litigation and another v. Union of India and another),** and **(2015) 12 SCC 231 (D.T. Virupakshappa v. C. Subash)**.

**4.** Shri Gangrade, learned Panel Lawyer appearing for respondent No.1/State has stated that in fact the State has no direct role in the matter because it is a complaint case filed by the private respondent (mother of the deceased), therefore, the onus to prove the case lies on respondent No.2.

**5.** Learned counsel appearing for the respondent No.2 has opposed the submissions made by the counsel for the petitioners and tried to justify the order passed by the Court below which is impugned in these petitions framing charges against the petitioners. He has also

given written-submissions relying upon the judgment of **Devender Singh and others Vs. State of Punjab through CB**I passed in **Criminal Appeal No.190/2003**, **AIR 2009 SC 1404 (Choudhury Praveen Sultana v. State of West Bengal & Anr.)**, **AIR 2009 SC 2015 (M.P. Gopalakrishnan v. State by Addl. S.P. CBI, B.S. & F.C, Bangalore)**, **AIR 2008 SC 1375 (State of Maharasthra v. Devahari Devasingh Pawar & Ors.)** and also in the case of **Ratan Tiwari & Ors. Vs. State of M.P & Anr.** passed in M.Cr.C. No.10880/20211 and submits that in view of the aforesaid judgments, the sanction under Section 197 is not required in the facts and circumstances of the case.

**6.** Shri Datt, learned senior counsel appearing for the petitioners has confined his stand and argued the matter seeking quashment of the complaint on the ground that without obtaining sanction as required under Section 197 of the Code of Criminal Procedure from the Government, the Court cannot take cognizance of the offence alleged to have been committed by the present petitioners who are public servants and acted in discharge of their official duties. According to Shri Datt

admittedly sanction has not been granted so far and as such, the complaint is not maintainable.

**7.** Accepting the submissions made by the counsel for the parties confining their claim to the extent of maintainability of complaint in absence of sanction from the State Government as per requirement of Section 197 of Cr.P.C., this Court is deciding these petitions in the following manner.

**8.** As per the undisputed fact, the deceased Chhota Gudda was a known hardcore criminal facing as many as 36 cases and was absconder despite the fact that he was released on parole suffering sentence of life as he has been convicted for the offence punishable under Section 302/34 of IPC and Section 25 and 27 of the Arms Act in S.T. No.3/1995 passed by the First Additional Judge. The parole was granted to him for the period from 28.10.2005 to 21.11.2002 but even after completion of said period, he did not surrender.

The present petitioners, who are the police personnel and public servants, were part of the team constituted in pursuance to the order of higher police officer for arresting the accused Chhota Gudda. Reward of Rs.10,000/- was announced on his arrest.

It is undisputed that on the basis of complaint made by respondent No.2/mother of the deceased, a Magisterial inquiry was conducted and report has been submitted by the Magistrate with an opinion that the death of the son of the complainant occurred due to encounter took place between the police team and accused party headed by deceased Chhota Gudda. The Human Rights Commission also took cognizance in the matter and finally came to conclusion that the allegations regarding fake encounter in the guise of murder by police of the son of the complainant were without any substance and the Human Rights Commission has also approved the report submitted by the Magistrate.

**9.** Shri Datt, learned senior counsel has submitted that under the circumstance, in which, the son of the complainant had died is nothing but an act of the petitioners done while discharging their official duties and, therefore, in view of the language used in Section 197 of Cr.P.C. and has been interpreted by the Supreme Court and the High Court time and again, sanction is a mandatory requirement to be fulfilled before taking cognizance of an offence said to have been committed by public servant in discharge of their official duties. He

submitted that under the existing facts of this case, non-obtaining prior sanction from the Government to initiate prosecution against the present petitioners makes the proceedings illegal and as such, is liable to be quashed.

**10.** Shri Datt has submitted the written-submissions on behalf of the petitioners placing reliance upon several decisions of the Supreme Court quoted hereinabove and respondent No.2/complainant has also submitted his written-submissions placing reliance upon several decisions of the Supreme Court and basically took a stand that prior sanction for initiating prosecution or taking cognizance against public servant is not prerequisite condition, but sanction can be obtained by the Court even during trial or at later stage of trial and therefore, the order passed by the Court below does not call for any interference and as such, asking dismissal of the petitions.

**11.** I have gone through the judgments relied upon by the parties. To separate the wheat from chaff, I find it necessary to dwell upon all relatable aspects before reaching to a firm conclusion. Per force, it is imperative to mention Section 197 of the Code of Criminal Procedure, which reads as under:-

“197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]-

(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) 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."

**12.** Now adverting to the decision rendered by the Supreme Court in case of **P.K. Pradhan (supra)** wherein the Supreme Court has dealt with scope of Section 197 of Cr.P.C. and also the intention of legislature for making the provision mandatory to take previous sanction of the Government and observed as under :-

"**5**. The legislative mandate engrafted in sub section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to

have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code; "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation." (Emphasis Supplied)

**15**. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge

or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial." (Emphasis Supplied)

**13.** Further, in case of **Gauri Shankar Prasad (supra)**, the Supreme Court has also dealt with Section 197 of Cr.P.C. and observed as under:-

"**7**. Section 197 Cr.P.C. affords protection to a judge or a magistrate or a public servant not removable from his office save by or with the sanction of the Government against any offence which is alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. The protection is provided in the form that no Court shall take cognizance of such offence except with the previous sanction of the Central Government or the State Government as the case may be. The object of the section is to save officials from vexatious proceedings against judges, magistrates and public servants but it is no part of the policy to set an official above the common law. If he commits an offence not connected with his official duty he has no privilege. But if one of his official acts is alleged to be an offence, the State will not allow him to be prosecuted without its sanction. Section 197 embodies one of the exceptions to the general rules laid down in section 190 Cr.P.C., that any offence may be taken cognizance of by the Magistrates enumerated therein. Before this section can be invoked in the case of a public servant two conditions must be satisfied i.e., (1) that the accused was a public servant who was removable from his office only with the sanction of the State Government or the Central Government; and (2) he must be accused of an offence alleged to have been

committed by him while acting or purporting to act in the discharge of his official duty.

(Emphasis Supplied)

**8**. What offences can be held to have been committed by a public servant while acting or purporting to act in the discharge of his official duties is a vexed question which has often troubled various courts including this Court. Broadly speaking, it has been indicated in various decisions of this Court that the alleged action constituting the offence said to have been committed by the public servant must have a reasonable and rational nexus with the official duties required to be discharged by such public servant.

**14**. Coming to the facts of the case in hand, it is manifest that the appellant was present at the place of occurrence in his official capacity as Sub-Divisional Magistrate for the purpose of removal of encroachment from government land and in exercise of such duty, he is alleged to have committed the acts which form the gravamen of the allegations contained in the complaint lodged by the respondent. In such circumstances, it cannot but be held that the acts complained of by the respondent against the appellant have a reasonable nexus with the official duty of the appellant. It follows, therefore, that the appellant is entitled to the immunity from criminal proceedings without sanction provided under Section 197 Cr.P.C. Therefore, the High Court erred in holding that Section 197 Cr.P.C. is not applicable in the case."

**14.** In case of **Abdul Wahab Ansari (supra),** the Supreme Court has dealt with Section 197 of Cr.P.C. and expressed the view as under :-

"**7**. Previous sanction of the competent authority being a pre-condition for the Court in taking cognizance of the offence if the offence alleged to have been committed by the accused can be said to be an act in discharge of his official duty, the question touches the jurisdiction of the Magistrate in the matter of taking cognizance and, therefore, there is no requirement that an accused should wait for taking such plea till the charges are framed. In Suresh Kumar Bhikamchand Jain vs. Pandey Ajay Bhushan and Ors., 1998(1) SCC, 205, a similar contention had been advanced by Mr.

Sibbal, the learned senior counsel appearing for the appellants in that case. In that case, the High Court had held on the application of the accused that the provisions of Section 197 get attracted. Rejecting the contention, this court had observed: (SCC pp. 217-18 para 23) (Emphasis Supplied)

> "The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance, the accused after appearing before the Court on process being issued, by an application indicating that Section 197(1) is attracted merely assists the court to rectify its error where jurisdiction has been exercised which it does not possess. In such a case there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible, for adjudication of the question as to whether in fact Section 197 has any application in the case in hand. It is no longer in dispute and has been indicated by this Court in several cases that the question of sanction can be considered at any stage of the proceedings."

The Court had further observed: (SCC pp. 218-19, para 24)

> "The question of applicability of Section 197 of the Code and the consequential ouster of jurisdiction of the court to take cognizance without a valid sanction is genetically different from the plea of the accused that the averments in the complaint do not make out an offence and as such the order of cognizance and/or the criminal proceedings be quashed. In the aforesaid premises we are of the considered opinion that an accused is not debarred from producing the relevant documentary materials which can be legally looked into without any formal proof, in support of the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty

thereby requiring sanction of the appropriate authority."

**9**. Coming to the second question, it is now well settled by the Constitution Bench decision of this Court in Matajog Dobey vs. H.C. Bhari, 1955 (2) SCR 925, that in the matter of grant of sanction under Section 197 of the Code of Criminal Procedure 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. In other words, 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. In the said case it had been further held that where a power is conferred or a duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution, because it is a rule that when the law commands a thing to be done, it authorises the performance of whatever may be necessary for executing its command. This decision was followed by this Court in Suresh Kumar Bhikamchand Jains case, 1998(1) SCC 205, and in a recent judgment of this Court in the case of Gauri Shankar Prasad vs. State of Bihar and Anr., 2000 (5) SCC 15. The aforesaid case has full force even to the facts of the present case inasmuch as in the said case, the Court had observed: (SCC p. 21, para 14)

> "It is manifest that the appellant was present at the place of occurrence in his official capacity as Sub-Divisional Magistrate for the purpose of removal of encroachment from government land and in exercise of such duty, he is alleged to have committed the acts which form the gravamen of the allegations contained in the complaint lodged by the respondent. In such circumstances, it cannot but be held that the acts complained of by the respondent against the appellant have a reasonable nexus with the official duty of the appellant. It follows, therefore, that the appellant is entitled to the immunity from criminal proceedings without sanction provided under Section 197 Cr.P.C."

It is not necessary for us to multiply authorities on

> this point and bearing in mind the ratio of the aforesaid cases and applying the same to the facts of the present case as indicated in the complaint itself, we have no hesitation to come to the conclusion that the appellant had been directed by the Sub-Divisional Magistrate to be present with police force and remove the encroachment in question and in course of discharge of his duty to control the mob, when he had directed for opening of fire, it must be held that the order of opening of fire was in exercise of the power conferred upon him and the duty imposed upon him under the orders of the Magistrate and in that view of the matter the provisions of Section 197(1) applies to the facts of the present case. Admittedly, there being no sanction, the cognizance taken by the Magistrate is bad in law and unless the same is quashed qua the appellant, it will be an abuse of the process of Court. Accordingly, we allow this appeal and quash the criminal proceeding, so far as the appellant is concerned."

**15.** Then, in case of **K. Kalimuthu (supra)**, the Supreme Court has dealt with the scope of Section 197 of Cr.P.C. and also the stage at which such requirement is attracted. The Supreme Court in this case has also dealt with the situation as to how it would be determined the reasonable connection between the act complained of and the official duty and observed "even if the public servant acts in excess of his duty, if there exists the said reasonable connection, the excess will not deprive him of the protection." The aforesaid view of the supreme Court is as under:-

> "**7**. The protection given under Section 197 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 purporting to act as

public servants. The policy of the legislature is to afford 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 they choose 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 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 duties. 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 this 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 his 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 does not get immediately attracted on institution of the complaint case.

**9**. Section 197(1) and (2) of the Code reads as under:

"197. (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 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.

* * *

(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."

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 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 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 committed during discharge of his official duty."

**16.** From the view taken by the Supreme Court as aforesaid, it is clear that the Court is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of public servant who is an accused of an offence alleged to have been committed during discharge of his official duty. This view of the Supreme Court makes it clear that if a public servant during the discharge of his official duties commits an offence for which complaint is made, the sanction from Government or competent authority is prerequisite condition.

**17.** In case of **Rizwan Ahmed Javed Shaikh (supra)**, the Supreme Court has also considered the protection provided to public servant as per Section 197

of Cr.P.C. and has also taken note of the fact that the alleged conduct said to be an offence whereby the police officer has taken custody of suspected offenders and has not produced them before the Magistrate within 24 hours of arrest. The Supreme Court has observed, since the initial arrest of suspected offenders was legal but later conduct of the police officer of not producing them within 24 hours of their arrest before the Magistrate became illegal, but even otherwise the offence allegedly committed by the police officer was considered within the ambit of discharge of duties in their official capacity.

> "14. The question of applicability of Section 197 (2) of the Code is not free of difficulty. In S.B. Saha and Ors. Vs. K.S. Kochar - AIR 1979 SC 1841 this Court on a review of the case law available on the point held as under :-
>
> > "*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 under the said provision. As pointed out by Ramaswami, K. in Baijnath v. State of Madhya Pradesh AIR 1966 SC 220 at p 222 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.

*18.* In sum, the sine qua non for the applicability of this section is that the offence charged be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.

*19.* While the question whether an offence was committed in the course official duty or under colour of office, cannot be answered hypothetically, and depends on the facts of each case, one broad test for this purpose first deduced by Varadachariar J. of the Federal Court in Hori Ram v. Emperor 1939 FCR 159 is generally applied with advantage. After referring with approval to those observations of Varadachariar J., Lord Simonds in H.B. gill v. The King AIR 1948 PC 128 tersely reiterated that the test may well be whether the public servant, if challenged, can reasonably claim, that what he does, he does in virtue of his office.

*20.* Speaking for the Constitution Bench of this Court, Chandrasekhar Aiyer J., restated the same principle, thus :

> 'In the matter of grant of sanction under Section 197, 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 dutythere 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*.' "

15. 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 purports to be performed, the public officer would be protected.

16. In the case at hand cognizance against the accused persons has not been taken under Section 323 of the IPC. It appears that the complaint stated the complainants to have been beaten mercilessly by one of the accused persons whilst in custody but when one of the complainants was examined by the learned Magistrate he stated only this much that one of the police officers had assaulted him. The statement was too vague to be acted upon and hence cognizance for causing hurt to any of the complainants has not been taken by the learned Magistrate. None of the complainants has made any grievance about it. The cognizance taken is only under Section 220 (commitment for trial or confinement by person having authority who knows that he is acting contrary to law) and Section 342 (wrongful confinement) of Indian Penal Code. Cognizance has also been taken for offences under Section 147 (Vexatious injury, search, arrest etc. by police officer) and Section 148 (Vexatious delay in forwarding a person arrested) of the Bombay Police Act, 1951. Cognizable and non-bailable offences were registered against the appellants. They were liable to be arrested and detained. The gravamen of the charge is the failure on the part of the accused persons to produce them before a Magistrate within 24 hours of arrest. The complainants were in the custody of the police officers and at the police station. It cannot be denied that the custody which was legal to begin with became illegal on account of non-production of the complainants before the Magistrate by the police officers officially detaining the appellants at a place meant for detaining the persons suspected of having committed an offence under investigation. The act constituting an offence alleged to have been committed by the accused-respondents was certainly done by them in their official capacity though at a given point of time it had ceased to be legal in spite of being legal to begin with. On the totality of the facts and circumstances of the case in our opinion the learned Magistrate and the High Court have not erred in holding the accused-respondents entitled to the benefit of protection under Section 197 (2) of the Cr.P.C. We

> have felt it unnecessary to deal with the allegation made in the complaint relating to beating of the appellants whilst in police custody because no cognizance has been taken for an offence in that regard and no cognizance can now be taken because of the bar of limitation enacted by Section 468 of Cr.P.C."

**18.** In case of **D.T. Virupakshappa (supra)**, the Supreme Court has considered the fact that if an offence alleged to have been committed by the public servant while discharging his official duties, the previous sanction is necessary before taking cognizance of the said offence. The observation made by the Supreme Court is as follows:-

> "**6**. In the case before us, the allegation is that the appellant exceeded in exercising his power during investigation of a criminal case and assaulted the respondent in order to extract some information with regard to the death of one Sannamma, and in that connection, the respondent was detained in the police station for some time. Therefore, the alleged conduct has an essential connection with the discharge of the official duty. Under Section 197 of CrPC, in case, the Government servant accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, the previous sanction is necessary.
>
> **7**. The issue of 'police excess' during investigation and requirement of sanction for prosecution in that regard, was also the subject matter of State of Orissa Through Kumar Raghvendra Singh and others v. Ganesh Chandra Jew[2], wherein, at paragraph-7, it has been held as follows: (SCC pp. 46-47)
>
> > "7. The protection given under Section 197 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 purporting to act as public servants.

> The policy of the legislature is to afford 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 they choose 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 of 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 [pic]servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 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 duties. 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 this section is available if the act falls within the scope and range of his official duty. …" (Emphasis supplied)

**8**. In Om Prakash (supra), this Court, after referring to various decisions, particularly pertaining to the police excess, summed-up the guidelines at paragraph-32, which reads as follows:

> "32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his

> office as to be inseparable from it (K. Satwant Singh). The protection given under Section 197 of the Code 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 of the protection (Ganesh Chandra Jew). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood." (Emphasis supplied)
>
> **9**. In our view, the above guidelines squarely apply in the case of the appellant herein. Going by the factual matrix, it is evident that the whole allegation is on police excess in connection with the investigation of a criminal case. The said offensive conduct is reasonably connected with the performance of the official duty of the appellant. Therefore, the learned Magistrate could not have taken cognizance of the case without the previous sanction of the State Government. The High Court missed this crucial point in the impugned order.

**19.** In view of the aforesaid, it is clear that if the alleged offence said to have been committed while discharging of official duty by a public servant then previous sanction is a mandatory requirement for taking cognizance of the said case by the Magistrate. The Supreme Court has deprecated that order of the High Court rejecting the petition without considering the said

crucial point that the public officer cannot be made an accused for a conduct or an offence alleged to have been committed by him while discharging his official duties without taking prior sanction of the Government.

**20.** In case of **Amal Kumar Jha (supra)**, the Supreme Court has further reiterated the same view that if a public servant is made an accused for an offence committed by him while discharging his official duties, the previous sanction under Section 197 of Cr.P.C. is indispensable. Although, the Supreme Court has also observed in this case with regard to nexus with discharge of official duties his alleged act is not established then previous sanction or protection as provided under Section 197 of Cr.P.C. is not required to be invoked before taking cognizance. But the Supreme Court in this case has very categorically observed that Section 197 Cr.P.C. can be invoked at initial stage before taking cognizance if the aforesaid nexus is established that the alleged offence has been committed by the police officer or public servant while discharging his official duties. The Supreme Court in the said case has observed as under:-

"**5**.This Court in Shreekantiah Ramayya

Munipalli v. The State of Bombay [1955 (1) SCR 1177] has observed thus :

> "18. Now it is obvious that if section 197 of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning. What it says is :
>
> > '**197. (1)** ..."when any public servant ….. is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty……"
>
> We have therefore first to concentrate on the word 'offence'.
>
> 19. Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the present case, the elements alleged against the second accused are, first, that there was an "entrustment" and/or "dominion"; second, that the entrustment and/or dominion was "in his capacity as a public servant"; third, that there was a "disposal"; and fourth, that the disposal was "dishonest". Now it is evident that the entrustment and/or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity.
>
> Therefore, the act complained of, namely the disposal, could not have been done in any other way. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because the second accused could not dispose of the goods save by the doing of an official act, namely officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to

act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it.

20. The act of abetment alleged against him stands on the same footing, for his part in the abetment was to permit the disposal of the goods by the doing of an official act and thus "willfully suffer" another person to use them dishonestly: section 405 of the Indian Penal Code. In both cases, the "offence" in his case would be incomplete without proving the official act.

21. We therefore hold that section 197 of the Code of Criminal Procedure applies and that sanction was necessary, and as there was none the trial is vitiated from the start. We therefore quash the proceedings against the second accused as also his conviction and sentence." (emphasis in original)

**6**. This Court in Matajog Dobey v. H.C. Bhari [1955 (2) SCR 925] has also considered when sanction is necessary. This Court has laid down thus : (AIR pp. 49-50, para 20)

"20.Is the need for sanction to be considered as soon as the complaint is lodged and on the allegations therein contained? At first sight, it seems as though there is some support for this view in Hori Ram's case and also in Sarjoo Prasad v. The King-Emperor (1945) F.C.R. 227. Sulaiman, J. says that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution. Varadachariar, J. also states that the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceeding.

But a careful perusal of the later parts of their judgments shows that they did not intent to lay down any such proposition. Sulaiman, J. refers (at page 179) to the prosecution case as disclosed by the complaint or the police

report and he winds up the discussion in these words: (Hori Ram case, SCC OnLine FC)

> '... "Of course, if the case as put forward fails or the defence establishes that the act purported to be done is in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground".

The other learned Judge also states at page 185 :

> "... At this stage we have only to see whether the case alleged against the appellant or sought to be proved against him relates to acts done or purporting to be done by him in the execution of his duty".'

It must be so. The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction.

Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case." (emphasis in original)

**7**. In Bhappa Singh v. Ram Pal Singh & Ors. 1981 (Supp) SCC 12 this Court considered the grant of protection to an officer for official act done in good faith thus :

> "6. In view of the circumstances mentioned in the last paragraph, there is little room for doubt that the Customs party was not out to commit dacoity either in the jewellery shop or the chaubara, that they also committed no trespass into either of those places, but that the purpose of the raid was to find out if any illegal activity was being carried on therein. The presence of two licensed Gold-smiths in the chaubara speaks volumes in that behalf. It may further be taken for granted that the Customs party was manhandled before they themselves resorted to violence, because there was no reason for them to open fire unless they were resisted in the carrying out of the raid peacefully.
>
> 7. Even though what we have just stated is a general prima facie impression that we have formed at this stage on the materials

available to us at present, it may not be possible to come to a conclusive finding about the falsity or otherwise of the complaint. But then we think that it would amount to giving a go-by to Section 108 of the Gold (Control) Act, if cases of this type are allowed to be pursued to their logical conclusion, i.e., to that of conviction or acquittal. In this view of the matter we do not feel inclined to upset the impugned order, even though perhaps the matter may have required further evidence before quashing of the complaint could be held to be fully justified. The appeal is accordingly dismissed."

**8**. In State of Maharashtra v. Dr. Budhikota Subbarao 1993 (3) SCC 339, this Court has considered the meaning of the 'official act' thus :

"6. 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 S.B. Saha 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 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.*"

Use of the expression, 'official duty' implies that the act or omission must have been done by the public servant in 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 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. In P. Arulswami v. State of Madras (1967) 1 SCR 201 this Court after reviewing the authorities right from the days of Federal Court and Privy Council held:

> "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."

*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 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 course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in 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 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 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 course of service but not in discharge of his duty 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 discharge of his duty can be deemed to be official was explained by this Court in Matajog Dubey v. H.C. Bhari AIR 1956 SC 44* thus:

> "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*.*"
>
> 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." (emphasis supplied)

**9**. In State of H.P. v. M.P. Gupta 2004 (2) SCC 349 this Court in regard to official duty has laid down thus :

> "*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 the 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."

**10**. In State of Orissa & Ors. v. Ganesh Chandra Jew 2004 (8) SCC 40 this Court has laid down that protection under section 197 would be available only when the act done by the public servant is reasonably connected with the discharge of his official duty. This Court has laid down thus :

"7. The protection given under Section 197 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 purporting to act as public servants. The policy of the legislature is to afford 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 they choose 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 of 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 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 duties. 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 this

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 does not get immediately attracted on institution of the complaint case."

**11**. In K. Kalimuthu v. State by DSP 2005 (4) SCC 512 this Court has observed that official duty implies that an act or omission must have been done by the public servant within the scope and range of his official duty for protection. This Court has laid down thus :

"*12*. 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.

* * *

*15*. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. Further, in cases where offences under the Act are concerned, the effect of Section 197, dealing with the question of prejudice has also to be noted."

**12**. In Manorama Tiwari & Ors. v. Surendra Nath Rai 2016 (1) SCC 594, it was held that the appellants were discharging public duties while

performing surgery in a Government hospital, hence prosecution was not maintainable without sanction from the State Government.

**13**. In State of Madhya Pradesh v. Sheetla Sahai & Ors. 2009 (8) SCC 617, this Court has laid down thus :

> "59. For the purpose of attracting the provisions of Section 197 of the Code of Criminal Procedure, it is not necessary that they must act in their official capacity but even where public servants purport to act in their official capacity, the same would attract the provisions of Section 197 of the Code of Criminal Procedure. It was so held by this Court in Sankaran Moitra v. Sadhna Das (2006) 4 SCC 584. The question came up for consideration before this Court in Matajog Dobey v. H.C. Bhari AIR 1956 SC 44 wherein it was held: (AIR pp. 48-49, para 17)
>
> "*17*. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty'. But the difference is only in language and not in substance.
>
> The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits.
>
> What we must find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation. In Hori Ram Singh v. Crown 1939

FCR 159 Sulaiman, J. observes:

> "... The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction."

The interpretation that found favour with Varadachariar, J. in the same case is stated by him in these terms at pp. 187-88:

> "... There must be something in the nature of the act complained of that attaches it to the official character of the person doing it...."

In affirming this view, the Judicial Committee of the Privy Council observed in Gill case : AIR 1948 PC 128 (IA pp. 59-60)

> "... A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. … The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.'

Hori Ram case 1939 FCR 159 is referred to with approval in the later case of Lieutenant Hector Thomas Huntley v. King Emperor 1944 FCR 262 but the test laid down that it must be established that the act complained of was an 'official' act appears to us unduly to narrow down the scope of the protection afforded by Section 197 of the Criminal Procedure Code as defined and understood in the earlier case. The decision in Albert West Meads v. R. AIR 1948 PC 156 does not carry us any further; it adopts the reasoning in Gill case AIR 1948 PC 128."

*60*. The said principle has been reiterated by this Court in B. Saha v. M.S. Kochar (1979) 4 SCC 177 in the following terms: (SCC pp. 184-85, paras 17-18)

> "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 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. As pointed out by Ramaswami, J. in Baijnath v. State of M.P. AIR 1966 SC 220 : (AIR p. 227, para 16)

> '*16*. … 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'.

*18*. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him." (emphasis in original)"

**14**. In view of the aforesaid discussion, it is clear that the omission complained of due to which offence is stated to have been committed, was intrinsically connected with discharge of official duty of the appellant, as such the protection under section 197 Cr.PC from prosecution without sanction of the competent authority, is available to the appellant. Thus, he could not have been prosecuted without sanction. It would be for the competent authority to consider the question of grant of sanction in accordance with law. In case sanction is granted only then the appellant can be prosecuted and not otherwise. Resultantly, the impugned orders are set aside, the appeal is allowed."

**21.** In the case of **Centre For Public Interest**

**Litigation (supra)**, the Supreme Court has elucidated the intention for giving protection under Section 197 of Cr.P.C. to public servant and expressed the "Official Duty" and observed the applicability of Section 197 Cr.P.C. in case *prima facie* it is found the act or omission for which the accused was charged had reasonable connection with regard to discharge of official duties. The view of the Supreme Court expressed in the said case is as under :-

> "**9**. The protection given under Section 197 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 purporting to act as public servants. The policy of the legislature is to afford 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 they choose 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 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 duties. 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 this 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 does not get immediately attracted on institution of the complaint case.
>
> **10**. 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 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.
>
> **11**. 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."

**22.** In case of **B.L. Verma (supra)**, the Supreme Court has observed that even though the offence alleged to have been committed by the accused (public servant) amount to abuse of power, but if it is found that said offence has been committed by the public officer in

purported discharge of his official duties, therefore, in absence of sanction under Section 197 of Cr.P.C. taking cognizance of the said offence is not proper. The High Court in the aforesaid case had dropped the proceedings against the accused persons for want of sanction and appeal preferred against the said order was dismissed by the Supreme Court with direction that first sanction should be obtained then cognizance can be taken against the public servant. The Supreme Court in the said case has observed as under:-

> "**5**. We agree with the reasons given by the High Court and are of the opinion that in the established facts and circumstances of the case as noticed by the High Court the allegations made against the respondent who was a public servant at the time of the commission of the alleged offence, no cognizance of the offence could have been taken against him in the absence of sanction under Section 197 CrPC. It is not disputed that the actions alleged against him lay within the scope of his official duties or at any event were allegedly committed in the purported discharge of his duties as Director of Enforcement, though it is canvassed that he had abused his official position while discharging his official duties. The High Court has rightly found that that would not oust the necessity of sanction under Section 197 CrPC to take cognizance of the offence. The expression "no court shall take cognizance of such offence except with the previous sanction" occurring in Section 197 CrPC unmistakably shows that the bar on the exercise of powers by the court to take cognizance is mandatory and the previous sanction from the competent authority for prosecution of the public servant, who is accused of having committed an offence either in the execution of his duties or in the purported execution of his duties is essential to take cognizance. Thus in the absence of sanction under Section 197 CrPC the court of the Chief

> Metropolitan Magistrate could not have taken cognizance of the offence against the respondent and the High Court, therefore, committed no error in directing the dropping of proceedings against him, in the absence of such a sanction."

**23.** In case of **Suresh Kumar Bhikamchand Jain (supra)**, the Supreme Court has reiterated the scope of applicability of Section 197 of Cr.P.C. and observed that if alleged offence has been committed by a pubic servant while discharging official duties, sanction under Section 197 of Cr.P.C. is a mandatory requirement. The observation made by the Supreme Court is as under:-

> "**24**. In Matajog case [AIR 1956 SC 44 : (1955) 2 SCR 925 : (1955) 28 ITR 941] the Constitution Bench held that the complaint may not disclose all the facts to decide the question of applicability of Section 197, but facts subsequently coming either on police or judicial inquiry or even in the course of prosecution evidence may establish the necessity for sanction. In B. Saha case [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] the Court observed that instead of confining itself to the allegations in the complaint the Magistrate can take into account all the materials on the record at the time when the question is raised and falls for consideration. In Pukhraj case [(1973) 2 SCC 701 : 1973 SCC (Cri) 944] this Court observed that whether sanction is necessary or not may depend from stage to stage. In Matajog case [AIR 1956 SC 44 : (1955) 2 SCR 925 : (1955) 28 ITR 941] the Constitution Bench had further observed that the necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place the material on record during the course of trial for showing what his duty was and also the acts complained of were so interrelated with his official duty so as to attract the protection afforded by Section 197 of the Code of Criminal Procedure. This being the position it would be unreasonable to hold that the accused even though might have really acted in discharge of his official duty for which the complaints have been lodged yet

> he will have to wait till the stage under sub-section (4) Section 246 of the Code is reached or at least till he will be able to bring in relevant materials while cross-examining the prosecution witnesses. On the other hand it would be logical to hold that the matter being one dealing with the jurisdiction of the court to take cognizance, the accused would be entitled to produce the relevant and material documents which can be admitted into evidence without formal proof, for the limited consideration of the court whether the necessary ingredients to attract Section 197 of the Code have been established or not. The question of applicability of Section 197 of the Code and the consequential ouster of jurisdiction of the court to take cognizance without a valid sanction is genetically different from the plea of the accused that the averments in the complaint do not make out an offence and as such the order of cognizance and/or the criminal proceedings be quashed. In the aforesaid premises we are of the considered opinion that an accused is not debarred from producing the relevant documentary materials which can be legally looked into without any formal proof, in support of the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty thereby requiring sanction of the appropriate authority."

**24.** In case of **Mohd. Hadi Raja (supra)**, the Supreme Court has again taken the same view which is as under:-

> "**8**. In support of the contention that sanction under Section 197 of the Code of Criminal Procedure is warranted in the case of officers of public undertakings and government companies having deep and pervasive control of the Government, it has been submitted that the object of sanction under Section 197 of the Code of Criminal Procedure is to guard against vexatious proceedings against judges, magistrates and public servants and to secure the opinion of superior authority whether it is desirable that there should be prosecution against public servants satisfying the requirements of Section 197(1) of the Code of Criminal Procedure. In this connection, reference has been made to the decision of this Court in Director of Inspection & Audit v. C.L. Subramaniam

> [1994 Supp (3) SCC 615 : 1995 SCC (Cri) 121] and in Shambhoo Nath Misra v. State of U.P. [(1997) 5 SCC 326 : 1997 SCC (Cri) 676] In the said decisions, this Court has indicated that sanction by appropriate authority as contemplated in Section 197(1) of the Code of Criminal Procedure, is intended to protect a public servant from needless harassment. Such protection by way of sanction renders assurance and protection to the honest officer to perform public duties honestly and to the best of his abilities because the threat of prosecution demoralises the honest officer."

**25.** In view of the consistent view taken by the Supreme Court, it is crystal clear that the provision of Section 197 of Cr.P.C. is a mandatory requirement to initiate prosecution against a public servant if it is found that the alleged act said to have been performed by the public servant while discharging his official duties. The aforesaid verdicts also throw sufficient light that even otherwise if the alleged offence said to have been found committed by the public servant in excess of power of public servant or found illegal even though the umbrella as provided under Section 197 of Cr.P.C. is available to public servant. Therefore, to determine the said contention, the only necessity is to see nexus between the alleged offence and the fact that same has been committed in discharge of official duties by the accused (public servant).

**26.** Here in this case, there is no dispute that the

petitioners are public servants working in the Police Department and further there is no dispute that the deceased was a convicted accused released on parole and was proclaimed absconder as he did not surrender after the expiry of parole period. 36 cases of heinous crime including murder, dacoity and attempt to murder registered against him, reward of Rs.10,000/- on his arrest had been announced. It is needless to note that if an accused is an absconder and the police personnel are trying to arrest him, the said act is considered to be an act done during discharge of their official duties. In the present case, even the complainant/respondent No.2 is not disputing the fact that his son Chhota Gudda was a convicted accused, released on parole and also facing myriad criminal cases. Indisputably, a reward was announced for arrest of the deceased and with the order of senior officer i.e. Inspector General of Police, a team was constituted to arrest the deceased and in furtherance to the said order accused party was intercepted by the police team and then deceased sustained injuries by the police weapons and eventually succumbed. Therefore, openly and undoubtedly the nexus is fully established that the alleged offence and its

commission is within the discharge of official duties by the police personnel. The object of Section 197 of Cr.P.C., is to save officials from vexatious proceedings against judges, magistrates and public servant and to protect public servant from needless harassment so as to provide them protection so that they may perform public duty honestly and to the best of their abilities because threat of prosecution demoralises the honest officer.

**27.** The cases on which respondent No.2 has placed reliance i.e. **Choudhury Praveen Sultana (supra)**, the Supreme Court has observed that *prima facie* alleged offence and the act committed by the accused (public servant) cannot be said to be the duty of the Investigating Officer and its commission while discharging the official duties and therefore, sanction under Section 197 is not required and the protection is not applicable to such public servant. Further in case of **M. Gopalakrishnan (supra),** the Supreme Court has observed that when alleged offence *prima facie* does not appear to be an act committed during discharge of official duties then sanction at initial stage before taking cognizance is not material and that requirement can be

determined even at later stage.

**28.** Further in case of **Devahari Devasingh Pawar (supra)**, relied upon by respondent No.2, the Supreme Court has observed that the alleged act committed against the accused does not relate to their official duties and as such, there is no nexus or connection to discharge of their official duties and the alleged offence is made out and in such situation, Section 197 of Cr.P.C. was not said to be a mandatory requirement before taking cognizance.

**29.** However, here in this case, the cases on which respondent No.2 has relied upon and the analogy laid down by the Supreme Court is not disputed even by the petitioners. But the question is whether such analogy is applicable in the facts and circumstances of the present case or not. In my opinion, the discussion as has been made hereinabove and looking to the facts existing in the present case when deceased was a convicted accused suffering sentence of life; released on parole for a specific period; did not get himself surrendered; and was declared as an absconder; the police was in search of said accused; tried to arrest him and then there was fight between the police team and the accused party in

which injuries were sustained by the deceased, needless to say that the petitioners are public servants and discharging their official duties making endeavours to arrest accused (the deceased), as such, required nexus is fully established and therefore, compliance of Section 197 of Cr.P.C. was a mandatory requirement for taking cognizance by the Magistrate on the complaint made by complainant/respondent No.2 (mother of the deceased). It is also indisputable that the Magisterial enquiry was conducted and in the said enquiry the Magistrate recorded the statements of the witnesses and also taken note of the weapons and other things seized from the spot and then arrived at conclusion that it was not a fake encounter, but opined that due to cross-firing between the police team and accused party, the deceased sustained injuries and succumbed and it was a valid encounter on the part of police. The Human Rights Commission also took cognizance of the same and ultimately approved the inquiry report of the Magistrate then under such circumstances, it is a fit case in which protection of Section 197 of Cr.P.C. can be provided to the petitioners, else the very purpose and object of giving protection to the public servant would be

frustrated.

**30.** In view of the above discussion, the order passed by the Court below is not sustainable in the eyes of law and the Magistrate concerned has not considered the material aspect and basic object of Section 197 of Cr.P.C. as has been considered by the Supreme Court consistently, which got discussed hereinabove. Thus, the impugned order being not sustainable, is liable to be set aside. Consequently, the prosecution as has been initiated by the Magistrate taking cognizance of complaint of respondent No.2, is not sustainable and, therefore, all proceedings initiated against the petitioners in pursuance to the complaint filed by respondent No.2, are hereby set aside.

**31.** The petitions filed by the petitioners are, accordingly, **allowed**.

**(SANJAY DWIVEDI)**
**JUDGE**

Sushma
ac/-