IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 6th OF MAY, 2024

MCRC No.21846 of 2018

BETWEEN:-

OMPRAKSH PATEL, SON OF LATE SHRI DAULATRAM PATEL, AGED ABOUT 60 YEARS, BY OCCUPATION: ASSISTANT CONSERVATOR OF FOREST, DIVISIONAL FOREST OFFICE, INDORE, R/O 31 ALANKAR PALACE, KESARBAG, ROAD, INDORE, DISTRICT INDORE (MADHYA PRADESH)

.....APPLICANT

(BY SHRI PARAG TIWARI - ADVOCATE)

AND

1. STATE OF MADHYA PRADESH, THROUGH POLICE STATION REHATGAON, DISTRICT HARDA (MADHYA PRADESH)

2. MUNNI BAI, DAUGHTER OF RAMDAS KOKRU AGED ABOUT 35 YEARS, RESIDENT OF VILLAGE-DENGA, THANA-RAHATGAUW, DISTICT-HARDA (MADHYA PRADESH)

.....RESPONDENTS

(SMT. SWATI ASEEM GEORGE – DEPUTY GOVERNMENT ADVOCATE FOR RESPONDENT NO.1/STATE, SHRI RAGHVENDRA KUMAR – ADVOCATE FOR RESPONDENT NO.2 THROUGH VIDEO CONFERENCING WITH SHRI UMASHANKAR RAWAT - ADVOCATE)

“Reserved on : 02.05.2024”

“Pronounced on : 06.05.2024”

This application having been heard and reserved for orders, coming on for pronouncement this day, the court passed the following:

ORDER

This application under Section 482 of Cr.P.C. has been filed seeking the following relief:

> "It is, therefore, prayed that this Hon'ble Court be kind enough to allow this petition and quash and set aside the order dated 20.03.2018 passed by the Court of Sushri Savita Jadia, Chief Judicial Magistrate, Harda (M.P.) in Cr.Case No.190/2018 (State Vs. Ranger Omprakash Patel) whereby cognizance has been taken for offence u/s 323, 325 I.P.C against the petitioner and also quash and set aside the entire proceedings thereto pending against the petitioner in the said Court and discharge the petitioner."

2. The facts necessary for disposal of present application in short are that an FIR in Crime No.90/07 was registered at Police Station Rahatgaon, District Harda for offence under Sections 323, 325 of IPC. The prosecution story in short is that on 12.07.2007 an FIR was lodged by Munni Bai on the allegations that on 11.07.2007 at about 03:00 p.m. she and her husband Ramdas were in their house. At that time, Ranger Om Prakash Patel (applicant) and other employees of Forest Department came and informed that they have come to arrest Ramdas and accordingly, they took away Ramdas with them. Complainant resisted to it. When they were trying to take her husband out of the village then she informed the villagers and all the villagers came there and got her husband released from the custody of forest officials, as a result, scuffle took place and during that scuffle applicant and other officials of Forest Department assaulted her as well as Rambhaors and Phoolwati, as a result, they have sustained injuries. The incident has been witnessed by Lalman, Hazari, Salikram, Shyamlal, Gorelal, Subedar, Ramlal and others. On the basis of this FIR the police lodged an offence under Sections 323, 325 of IPC. After completing the investigation, police

filed the closure report. After recording the statement of complainant and other witnesses, Trial Court by order dated 20.03.2018 rejected the closure report and took cognizance of offence under Section 323, 325 of IPC.

3. Challenging the order dated 20.03.2018 passed by C.J.M., Harda, it is submitted by counsel for applicant that applicant, who was working on the post of Ranger got an information that certain persons have encroached upon the forest land and accordingly, when he went to remove the encroachment alongwith other officials of the Forest Department. They were attacked. Accordingly, FIR was lodged by applicant in Crime No.76/07 registered at Police Station Rahatgaon, District Harda against more than 25 persons for offence under Sections 341, 364, 294, 397, 327, 332, 353, 186, 506, 342, 216, 109 of IPC.

4. By referring to aforesaid FIR, it is submitted by counsel for applicant that applicant alongwith other forest officials were on patrolling and during patrolling they found that Ramdas S/o Rohna Korku, Rambhau S/o Rohna and Rambharos S/o Rohna Korku were illegally ploughing the forest land with an intention to encroach upon the said land. They stopped these persons from doing the same and accordingly, they ran away alongwith their cattle and plough. However, accused Ramdas was taken in custody and POR No.12099/2023 for offence under Section 26 of Forest Act was registered. After formally arresting Ramdas they started coming back from the village at about 04:30 p.m. When forest officials reached near the bank of Kajal river then the residents of Village Thega, who have been named in the FIR as well as other 8-10 persons surrounded them. They were armed with *lathi*, axe, rod, stones, *ballam* etc. and forcefully stopped them and

started abusing the forest party filthily in the name of mother and sister. They were speaking in the local tribal language which the applicant can understand. They were alleging that they are the active workers of S.J. Party and their leaders namely Sameem Modi, Anurag Modi and Sanjay Arya have directed them that land belongs to them and in case if Nakedaar or Rangers come to the village, then they should be tied and should be beaten and their leaders have also instructed them to encroach upon the government land and if it is objected by Forest Department, then they should not listen to them and forest officials should be produced before Sameem Modi, Anurag Modi and Sanjay Arya and since their leaders have issued such an order, therefore, they will teach a lesson to the forest officials. At the instigation of Sameem Modi, Anurag Modi and Sajay Arya, they attacked the forest officials and also forcefully took away Ramdas, who was in the custody of forest officials. All the accused persons in furtherance of common object had assaulted the complainant/applicant/Omprakash Patel, forest guards and other forest officials with an intention to kill them. Thereafter, by tying their hands and legs, they took them to Village Thega and while assaulting them, they were insisting that they will produce the forest officials before Sameem Modi, Anurag Modi and Sanjay Arya and will teach a lesson to forest officials and only under the orders of Sameem Modi, Anurag Modi and Sanjay Arya, they would release them. They took away the government mobile phone, titan watch, one silver *kada*, one gold ring fitted with *pukhraj*, one silver ring fitted with *neelam* and cash amount of Rs.3,700/- from him. The wife of Ramdas also compelled him to sign certain blank papers. On the next date i.e. on 12.07.2007

forest officials were got released by officials of Forest Department and police staff.

5. It is submitted by counsel for applicant that police after completing the investigation has also filed a charge sheet against multiple accused persons for offence under Sections 341, 364, 294, 397, 327, 332, 353, 186, 506, 342, 216, 109 of IPC.

6. Challenging the order of taking cognizance, it is submitted by counsel for applicant that even if allegations made by complainant are considered on their own face value, then it is clear that applicant, who was Ranger and was on patrolling had arrested Ramdas in connection with criminal offence and while they were bringing him back they were attacked by villagers and in that scuffle complainant and others also had sustained injuries. Although the aforesaid allegations of assault by applicant and other government officials is false but even if it is taken to be a gospel truth in view of limited scope of interference at the stage of 482 of Cr.P.C., still it is clear that applicant was discharging his official duty and therefore, he was entitled for protection under Section 197 of Cr.P.C. Trial Court has ignored this aspect and thus, it should not have taken cognizance against applicant after rejecting the closure report. To buttress his contentions, counsel for applicant has relied upon the judgments passed by Supreme Court in the cases of **D. Devaraja vs. Owasis Sabeer Hussain** reported in **(2020) 7 SCC 695**, **Rishipal Singh v. State of Uttar Pradesh** reported in **(2014) 7 SCC 215**, **Gauri Shankar Prasad v. State of Bihar and another** reported in **(2000) 5 SCC 15**, **K. Kalimuthu v. State** reported in **(2005) 4 SCC 512**, **Shambhoo Nath Misra v. State of U.P. and others** reported in **AIR**

1997 SC 2102 and **Lalaram Khattar v. Himanshu Singh** reported in **(2002) 1 MP Weekly Note 11**.

7. *Per contra*, the petition is vehemently opposed by counsel for respondent No.2. It is submitted that it is true that applicant was a government official on the date of incident but now he is no more government official, therefore, he is not entitled for protection under Section 197 of Cr.P.C. It is further submitted that under the Forest Rights Act, 2006 the tribals are entitled for protection of their rights and since applicant had violated the forest rights of respondent No.2, therefore, she had every right to resist the illegal activities of applicant.

8. Heard learned counsel for parties.

9. Before considering the question of applicability of provision of Section 197 of Cr.P.C., this Court would like to consider the law governing the said field.

10. The Supreme Court in the case of **Gauri Shankar Prasad (supra)** has held as under:

> "**7.** Section 197 CrPC 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 CrPC, 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.

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.

9. More than four decades ago, this Court speaking through Chandrasekhara Aiyar, J. in *Matajog Dobey* v. *H.C. Bhari* [AIR 1956 SC 44 : (1955) 28 ITR 941] succinctly stated the principle of law in these words:

> "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.
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> 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."

10. This Court in *Suresh Kumar Bhikamchand Jain* v. *Pandey Ajay Bhushan* [(1998) 1 SCC 205 : 1998 SCC (Cri) 1] dealing with the question, the stage at which the plea against taking cognizance without a sanction from the competent authority can be raised, observed thus: (SCC pp. 217-18, para 23)

> "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."

11. In that case this Court referred to the decision in *Matajog Dobey* v. *H.C. Bhari* [AIR 1956 SC 44 : (1955) 28 ITR 941] .

12. In the case of *State* v. *B.L. Verma* [(1997) 10 SCC 772 : 1997 SCC (Cri) 1037] this Court held that since it is not disputed that actions alleged against the public servant 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 that would not oust the necessity of sanction under Section 197 CrPC to take cognizance of the offence. This Court observed that 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 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. This Court confirmed the order of the High Court directing the dropping of proceedings against the public servant in the absence of such a sanction.

13. In the case of *N.K. Ogle* v. *Sanwaldas* [(1999) 3 SCC 284 : 1999 SCC (Cri) 405] in which the appellant at the relevant time was the Tehsildar and the District Collector had passed an order for collecting the lease money of Rs 4653 from the respondent and on the basis of such order of the

> District Collector, the appellant registered the matter in this Court and ordered for issuance of the demand letter and a demand letter had been served on the respondent and yet the respondent had not made the payment and, therefore, an attachment warrant was issued and a few days thereafter when the respondent was available with the scooter in the Tehsil Office, the said scooter was seized and such seizure and retention of the scooter of the respondent was the gravamen of the allegation of offence under Section 379 in the complaint case, this Court took the view that such action of the Tehsildar cannot but be a bona fide act on the part of the appellant in the purported exercise of the power under the M.P. Land Revenue Code. On the aforesaid finding, this Court held that the acts complained of by the respondent against the appellant had been committed in discharge of the official duty of the Tehsildar and, therefore, no cognizance could be taken by any court without prior sanction of the competent authority."

11. The Supreme Court in the case of **K. Kalimuthu (supra)** has held as under:

> **"10.** Such being the nature of the provision the question is how should the expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", be understood? What does it mean? "Official" 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. In *B. Saha* v. *M.S. Kochar* [(1979) 4 SCC 177 : 1979 SCC (Cri) 939] it was held : (SCC pp. 184-85, para 17)
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> > "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."
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> (emphasis in original)

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. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to

be limited to those duties which are discharged in 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 the 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 sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in *Matajog Dobey* v. *H.C. Bhari* [(1955) 2 SCR 925 : AIR 1956 SC 44 : 1956 Cri LJ 140] thus : (SCR pp. 933 & 934-35)

> "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. … 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."

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.

13. The above position was highlighted in *State of H.P.* v. *M.P. Gupta* [(2004) 2 SCC 349] , *State of Orissa* v. *Ganesh Chandra Jew* [(2004) 8 SCC 40 : 2004 SCC (Cri) 2104 : JT (2004) 4 SC 52] and in *S.K. Zutshi* v. *Bimal Debnath* [(2004) 8 SCC 31 : 2004 SCC (Cri) 2096 : JT (2004) 6 SC 323] .

14. In *P.K. Pradhan* v. *State of Sikkim* [(2001) 6 SCC 704 : 2001 SCC (Cri) 1234] it has, inter alia, been held as follows : (SCC p. 709, para 5)

> "*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 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 interrelated 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."
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> **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. The Supreme Court in the case of **Shambhoo Nath Misra (supra)** has held as under:

> **"4.** Section 197(1) postulates that "when any person who is 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" of the appropriate Government/authority. The essential requirement

> postulated for the sanction to prosecute the public servant is that the offence alleged against the public servant must have been done while acting or purporting to act in the discharge of his official duties. In such a situation, it postulates that the public servant's act is in furtherance of the performance of his official duties. If the act/omission is integral to the performance of public duty, the public servant is entitled to the protection under Section 197(1) of CrPC. Without the previous sanction, the complaint/charge against him for the alleged offence cannot be proceeded with in the trial. The sanction of the appropriate Government or competent authority would be necessary to protect a public servant from needless harassment or prosecution. The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the honest officer. The requirement of the sanction by competent authority or appropriate Government is an assurance and protection to the honest officer who does his official duty to further public interest. However, performance of official duty under colour of public authority cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime. The Court to proceed further in the trial or the enquiry, as the case may be, applies its mind and records a finding that the crime and the official duty are not integrally connected."

13. The Supreme Court in the case of **D. Devaraja (supra)** has held as under:

> "**66.** Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the Government, to prosecute would give an upright police officer the confidence to discharge his

official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate Government.

67. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a policeman assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However, if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

68. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of the government sanction for initiation of criminal action against him.

69. The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that

> sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.
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> **70.** To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.
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> **71.** If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate Government is obtained under Section 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act."

14. From both the FIRs i.e. lodged by complainant and lodged by applicant against the complainant and other multiple accused persons, it is clear that husband of complainant was arrested by applicant and when forest officials were taking her husband with them, then forest party was attacked by respondent No.2 and other villagers. If the facts mentioned in the FIR lodged by applicant are considered, then it is clear that when applicant found that husband of respondent No.2 and his brothers are trying to encroach upon the land belonging to State Government then he stopped them and ultimately successfully arrested Ramdas i.e. husband of respondent No.2. Not only thereafter applicant and other forest officials were beaten but they were abducted and were kept in illegal

captivity for the whole night of 11.07.2007 and were released on the next day only after intervention of forest officials as well as police party. Thus, it is clear that applicant was discharging his duty of protecting the forest land. Even case diary of crime No.76/07 lodged by applicant also contains the arrest memo of Ramdas which was executed by applicant on 11.07.2007 while arresting husband of respondent No.2. Thus, it is clear that applicant was discharging his official duty and therefore, he was entitled for protection under Section 197 of Cr.P.C. and that fact has not been considered by C.J.M., Harda while taking cognizance of offence under Sections 323, 325 of IPC.

15. So far as non-applicability of provisions of Section 197 of Cr.P.C. is concerned, submission made by counsel for respondent No.2 is misconceived.

16. Section 197 of Cr.P.C. reads as under:

> "**197. Prosecution of Judges and public servants.-**(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [1][save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]---
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> > (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 (43 of 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.
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> (4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

17. The use of word "is" or "was" clearly provides that whether a person is still holding the office or not, is entitled for protection under Section 197 of Cr.P.C. If the offence allegedly committed by him was done while acting or purporting to act in discharge of his official duty, therefore, even after the applicant has retired, still he would be entitled for protection as provided under Section 197 of Cr.P.C.

18. So far as contention of counsel for respondent No.2 that in view of Section 4 of Forest Rights Act respondent No.2 or her family members were entitled to protect their forest rights is concerned, counsel for respondent No.2 was directed to point out the documents to show that they were in possession of forest land prior to coming into force of Forest Rights Act, 2006. It was fairly conceded by counsel for respondent No.2 that there is nothing on record to suggest that they were in possession of forest land on the day when the Forest Rights Act, 2006 came into force. Thus, it is clear that respondent No.2 and her family members were trying to encroach upon the forest land in order to grab the same and therefore, applicant was well within his right to protect the forest land.

19. Furthermore, according to complainant herself her husband was arrested by forest officials and while forest officials were taking him

away with them, respondent No.2 and other villagers attacked the forest party and took away her husband. If a person has been arrested by forest officials, then respondent no.2 or other villagers had no business to attack the forest party and to take away detenu.

20. Thus, it is clear that even if entire allegation made by complainant/respondent No.2 in FIR is taken on their face value as a gospel truth, then this Court is of considered opinion that in fact it supports the FIR No.76/07 lodged by applicant against villagers including respondent No.2 but does not disclose commission of any offence by applicant. If somebody was trying to take away detenu from the custody of forest officials, then they were well within their right to use the reasonable force to deter the attackers from taking away the detenu from their custody.

21. Under these circumstances, this Court is of considered opinion that not only sanction under Section 197 of Cr.P.C. was required but even otherwise allegations made against applicant do not make out any offence.

22. *Ex-consequenti*, the order dated 20.03.2018 passed by C.J.M., Harda in Criminal Case No.190/2018 is hereby **set aside**. The closure report filed by police is hereby accepted.

23. For the reasons mentioned above, the application succeeds and is **allowed**.

(G.S. AHLUWALIA)
JUDGE

vc