

CrI.O.P.(MD) Nos.12975 to 12977,
17390 and 21859 of 2018
and 18808 of 2019

A.D.JAGADISH CHANDIRA, J.
and
K.RAJASEKAR, J.

The above cases have been listed before us on a reference made by a learned Single Judge of this court for deciding the following issues:

"(i) Whether the plea of the accused to interpret the word 'removable by Government' in broad perspective by re-evaluating the law laid down by this Court in 1979 (1) MLJ (CrI.) 705 & CDJ 2017 MHC 6889 is to be entertained or not? If so, whether the police officer from the rank of Constable to Inspector of Police are entitled to protection under Section 197 Cr.P.C. or not?

(ii) Whether the ratio laid down by the learned Judges of this Court reported in CDJ 2015 MHC 5407, 2018 (5) CTC 420 & 2020 (2) LW (CrI.) 667 contrary to the decisions reported in 1979 (1) MLJ (CrI.) 705 & CDJ 2017 MHC 6889, is correct or not?

(iii) If the decision of the Hon'ble appropriate Bench would be that the requirement of sanction to prosecute

under Section 197 Cr.P.C, is necessary, then the Hon'ble appropriate Bench may formulate the procedure to obtain sanction from the appropriate authority by fixing the duties and responsibilities to give sanction within the time frame as fixed by the Hon'ble Supreme Court in Vineet Narain v. Union of India reported in 1998 (1) SCC 226."

2. In all the above Criminal Original Petitions, the petitioners, who are in the cadre from Police Constable to Inspector of Police and alleged to have committed illegal activities under the guise of discharge of duty, have questioned the cognizance taken by the Trial Courts contending that without there being a sanction under Section 197 Cr.P.C., it is invalid.

3. The learned Single Judge, by pointing out certain decisions, observed that conflicting views have been rendered by the some Hon'ble Judges with regard to pre-requisite sanction to be obtained under Section 197 Cr.P.C. to prosecute against the police personnel from Constable upto the Inspector of Police.

4. The decisions pointed out by the learned Single Judge holding that sanction is essential are as under:-

i) **Muthuswamy Gounder vs. C.P. Singharam** (1979 (1) MLJ(Crl) 705)

ii) **Kumaravel & Ors Vs. The State of Tamil Nadu** in Crl.R.C(MD).No.29 of 2015

iii) **Nagarajan Vs Anthony Joseph** reported in MANU/TN/3448/2017 : CDJ 2017 MHC 6889

5. The decisions pointed out by the learned Single Judge holding that sanction is not required are as under:-

i) **Charming S.Wiselin v. R.Augustin** (CDJ 2015 MHC 5407)

ii) **P. Kalai Kathiravan Vs. Ramaiah** (2018 (5) CTC 420)

iii) **R.Shibu Kumar v. George Vinsly** reported in Crl.O.P(MD). No.1443 of 2018

iv) **G.Kannan v. Ganesan** reported in 2020 (2) LW(Crl) 667

6. When the matters were listed, detailed submissions were made by various learned counsels as specified hereunder:-

i) Mr.R.Anand learned counsel for the petitioners in Crl.O.P.(MD)

Nos.12975 to 12977 of 2018

ii) Mr.R.Gandhi, learned Senior Counsel for the petitioner in CrI.O.P. (MD) No.17390 of 2018

iii) Mr.C.Arul Vadivel, learned Senior Counsel for the petitioner in CrI.O.P.(MD) No.21859 of 2018

iv) Mr.S.C.Herold Singh learned Senior Counsel for the petitioner in CrI.O.P.(MD) No.21859 of 2018.

v) Mr.Hasan Mohamed Jinnah, learned State Public Prosecutor and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor for the State.

7. The crux of the submissions made on behalf of the petitioners are as under:-

i) The petitioners, being in the rank from Police Constable upto the rank of Inspector of Police, are bound to be in the field of investigation and there are many a case where the accused in the criminal cases, in order to escape from the clutches of the law, would prefer frivolous and vexatious complaints against the police personnel and in such cases, they are in dire necessity of protection guaranteed by Section 197 Cr.P.C., however, it is being extended only for the cadre above Inspector of Police and the lower category police personnel are denied the same.

ii) Since the members of the uniformed service had to perform their duty only the basis of "obey the order" of the higher-ups, liability for the negative outcome of such discharge of duty cannot be attributed to the lower category by denying them the protection available to the higher ups.

iii) The classification of public servants discharging official duty based on the term "Removal by the Government" which excludes Police Officers from the rank of Inspector of Police and below, who can be removed by the appointing authorities is clearly unreasonable and arbitrary, lacking intelligible differentia and is strictly in violation of Article 14 of the Indian Constitution.

iv) The Government has only delegated the appointing authorities with the power of removal of subordinate public servants and that does not take away the power of the Government to remove the public servants. Hence, the police officer in the rank of Inspector of Police and below can still be interpreted to be the one, whose service can be removed by the Government and thereby, they are entitled to the protection under Section 197 Cr.P.C.

v) There is no specific notification issued by the State of Tamilnadu in exercise of power under Section 197(3). However, the denial of protection under Section 197 Cr.P.C. for a particular rank of police officers, who are

also the members of the police force charged with maintenance of public order solely based on absence of notification under Section 197(3) Cr.P.C., is not a reasonable classification and it is clearly against the principle of Article 14 of the Indian Constitution.

vi) The above differentia/classification created by law evidently does not have a rational relation to the object of Section 197 Cr.P.C. viz., safeguarding from unnecessary harassment of public servant.

vii) Confining the scope of sanction under Section 197 Cr.P.C. only to such public servants, who are not removable except by sanction of State Government and thereby creating two classes of public servants i.e., those who are removable and those who are not so, is arbitrary creating an artificial discrimination and hence, violative of Article 14 and 16 of the Constitution of India.

viii) Third proviso to Rule 4 of Tamil Nadu Police (Discipline & Appeal) Rules, 1955 provides exclusive protection for the Inspector of Police in "Q" Branch alone whereas such a protection is not given to similar rank of Police officers working in other wings of the same Department, which is violative of Article 14 of the Constitution of India.

ix) The petitioners are also public servants falling under the eighth description of Section 21 IPC, whose duty is, as such officer, to prevent

offences to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience and twelfth description having been remunerated for the performance of public duty by the Government and thereby, they are entitled to the protection under Section 197 Cr.P.C.

x) The reference having been made to give an authoritative pronouncement as to whether the plea of the accused to interpret the words "removable by Government" employed in Section 197 Cr.P.C. is in a broad perspective or not, in order to ascertain whether the post held by the petitioners, being police personnel, is removable by the Government or not, a reference to the Rules governing their service viz., Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 is required.

xi) Rule 2(1)(i) of such Rules deals with punishment of removal and the schedule annexed with the Rules throws light on the issue by enlisting the authority, which may impose various penalties. The petitioners being subordinate police officers, Deputy Inspector General of Police has got authority to impose the major punishment of removal or dismissal from service, however, Rules 15A, 15AA and 15B of the said Rules would go to show that the State Government is the ultimate authority to impose or to confirm the punishment of removal against the delinquent officers.

xii) The terminology employed as "removable by Government" has to be given liberal interpretation and thereby the petitioners are entitled to the benefit under Section 197 Cr.P.C.

xiii) The provision under Section 197 Cr.P.C. has to be interpreted in consonance with the object of protecting the responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting purporting to act as public servants.

xiv) The ratio laid down in the decision in ***Dr.Subramanian Swamy vs. Director CBI and another*** (2014) 8 SCC 682, striking down the insertion of Section 6A(1) in Delhi Special Police Establishment Act holding that classification made therein similar to the case on hand is not based on intelligible differentia and it sidetracks the fundamental objective of the PC Act, 1988 to deal with corruption and act against senior public servants, squarely applies to the case on hand.

xv) No universal rule can be laid down that the Inspector of Police and subordinate police officers are not entitled to the benefit of sanction granted under Section 197 Cr.P.C. While the judgment rendered in 1979(1) MLJ (CrL.) 705 and CDJ 2017 MHC 6889, it might not have been brought to the notice of the learned Judges that there are exemptions provided in the

Service Rules to initiate disciplinary proceedings against the police officers by the schedule mentioned authorities.

xvi) Among such exemptions, the **first** one is that as per the proviso to Rule 4 of Tamil Nadu Police (Discipline & Appeal) Rules, 1955, in order to remove or dismiss a member of Q Branch police personnel, the previous sanction of the State Government is required. The **second** exemption is that when more than one member of service are involved, the authority competent to institute disciplinary proceedings and impose any of the penalties specified in Rule 2 shall be the authority in respect of the member who holds the higher post and the disciplinary proceedings against all of them shall be taken together. The proviso therein specifies that where a member of the service and a member of other service are jointly involved or whose cases are inter connected, the Government shall be the authority competent to initiate disciplinary proceedings against the member of the service and impose any of the penalties specified in Rule 2. The **third** exemption is that in case a superior officer is charged alongwith the subordinate police officers as Conspirators, the sanction required under Section 197 Cr.P.C. may be extended to the subordinate police officers who, are said to have committed the offence at the instance of their superior officers by applying the Rule of Parity.

xvii) Considering the plight of the petitioners, a recommendation is required to be made to the Government to issue a notification with reference to Section 197(3) of Cr.P.C to extend the benefit of such provision without depriving any class or category of members.

8. The decisions relied on behalf of the appellants are as under:-

i) ***Sivan Chodath vs. Joshi and another*** (2022) SCC OnLine Ker 136

ii) ***Rizwan Ahmed Javed Shaikh and others vs. Jammal Patel and others*** (2001) 5 SCC 7

iii) ***Hanumant Shrinivas Kulkarni vs. Emperor*** (31) 1930 CrLJ 353

iv) ***E vs. G.Sadagopan*** (1953 CrLJ 1929)

v) ***Indu Bhushan Chatterjee vs. State*** (AIR 1955 Cal. 430)

vi) ***D.T.Virupakshappa vs. C.Subash*** (2015) 12 SCC 231

vii) ***State of Orissa vs. Ganesh Chandra Jew*** (2004) 8 SCC 40

viii) ***Sidhartha Sarawgi vs. Board of Trustees for the port of Kolkatta and others*** (SLP (Civil) No.18347/2013) (2014) 16 SCC 248

ix) ***Bhikhaji Vaghaji vs. L.K.Barot and others*** (1981) SCC OnLine Guj. 80

x) ***State of Uttarkhand vs. Yogendra Nath Arora and another***
(2013 (14) SCC 299

xi) ***Centre of Public Interest Litigation vs. Union of India*** (2005)
8 SCC 202

xii) ***Indradevi vs. State of Rajasthan*** (2021) 8 SCC 768

9. Per contra, Mr.Hasan Mohamed Jinnah, learned State Public Prosecutor and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the State, adopting the cause of the de facto complainants in all the cases, submitted their contentions as under:-

i) Sanction for prosecution under Section 197 Cr.P.C. will be necessary only if a public servant --

(a) is removable from his office either by the Government or with the sanction of the Government

(b) is employed in connection with the affairs of a State or he was, at the time of commission of the alleged offence employed in connection with the affairs of the Union or he was, at the time of commission of the alleged offence, employed in connection with the affairs of a State

(c) is alleged to have committed an offence while acting or purporting to act in the discharge of his official duty.

ii) Though a plain reading of the provision under Section 197 Cr.P.C., the requirement for prior sanction is necessary for the public servant who is removable by the Government or with the sanction of Government, the petitioners, who are in the rank from Police Constable to Inspector of Police are removable from service only as per the authority, which governs their service viz., Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, similar to the position for other public servants, who may be removable by the authority, Board, etc. and thereby prior sanction is not necessary for them as well.

iii) When some lower authority is, by law or rule or order, empowered to remove a public servant from office, then such public servant cannot be said to be one removable by or with the sanction of the Government so as to necessitate prosecution sanction under Section 197 Cr.P.C.

iv) The argument raised on behalf of the accused that the ultimate authority for removing them is the Government in view of the enabling provision under the Rules which provides Appeal, Revision, etc., against the order of removal, has to be negated for the simple reason that the Appellate Authority or Revisional Authority only concurs or disagrees with the removal of service by the appointing authority and that would not mean that the Government alone is the competent to remove and thereby the

petitioners cannot take shelter of Section 197 Cr.P.C. when the provision is very clear that it applies only to the Public Servants, who are removable by or with the sanction of Government.

v) With regard to the contention that the provision of Section 197(1) Cr.P.C. is violative of Article 14 of the Constitution of India, the discrimination on the basis of reasonable classification is not violative of Article 14 of the Constitution of India. The classification of the public servants in Section 197 Cr.P.C. has a reasonable basis considering the supervisory power of the said public servants in addition to the responsibilities held by them and the vast jurisdiction they exercise. Considering the nature of job, which is being discharged by the officers from the rank of Deputy Superintendent of Police and above, the legislature was cautious enough to make a classification, which is reasonable and serves a basis.

vi) Catena of judgments rendered by the Supreme Court of India is consistent in holding that only for public servants, who are removable by or with the sanction of Government, the protection under Section 197 Cr.P.C. is required. Such judgments throw much light upon the issue and as such the judgments rendered by this court holding that prior sanction is required for public servants, who are not removable by or with the sanction of the

Government is to be held bad in law.

vii) While interpreting a legal provision, a judgment rendered on the principle of parity cannot be applied. The principle of parity would only apply for a factual situation and not for a legal issue.

viii) To be precise, prior sanction under Section 197 Cr.P.C is necessary for prosecuting the public servants only if they are removable by or with the sanction of the Government and as such in the cases under reference, the public servants mentioned viz., Constable to Inspector of Police attached to Tamil Nadu Police are removably only by the authority viz., Superintendent of Police or Deputy Inspector General of Police or Commissioner of Police and there is no question of prior sanction for the court to take cognizance of the cases filed against them.

10. The decisions relied on behalf of the State are as under:-

- i) ***Nagraj vs. State of Mysore*** (1963 SCC OnLine SC 249)
- ii) ***Fakhruzamma vs. State of Jharkhand*** (2013 (15) SCC 552)
- iii) ***K.CH.Prasad vs. J.Vanalatha Devi*** (1987) 2 SCC 52
- iv) ***S.K.Miglani vs. State NCT of Delhi*** (2019) 6 SCC 111
- v) ***Dr.Subramanian Swamy vs. Director CBI and another*** (2014) 8 SCC 682
- vi) ***Matajog Dobey vs. H.C.Bhari*** (AIR 1956 SC 44)

vii) ***K.N.Sukla vs. Navnait Lal Mani Lal Bhat and another*** (AIR 1967 SC 1331).

11. Heard the learned Senior Counsel appearing for the petitioners and the learned Additional Public Prosecutor and perused the decisions relied on by them.

12. To be precise, the contentions of the petitioners, who happen to be in the rank of Police Constable upto the rank of Inspector of Police, are three fold viz.,

i) The words "*a public servant not removable from his office save by or with the sanction of the Government*" employed in Section 197 Cr.P.C. have to be given a liberal interpretation to include them so as to enable them to get the benefit of the said provision, despite the fact that they could be removed from the office by the Inspector General of Police by delegation of such powers by the State.

ii) By such a delegation of powers, the Government does not lose its ultimate power and it remains with the State being either revisional/appellate authority and thereby, they also have to be construed as not removable from service except with the sanction of the Government.

iii) The classification made among themselves while extending the benefit of the provision under Section 197 Cr.P.C. is unreasonable and arbitrary, lacking intelligible differentia and is strictly in violation of Article 14 of the Indian Constitution and it does not have a rational relation to the object of Section 197 Cr.P.C. viz., safeguarding from unnecessary harassment of public servant.

13. To give a quietus to the issue, it would be appropriate to quote the legal provision viz., Section 197 Cr.P.C., (which is *pari materia* to Section 218 of Bharatiya Nagarik Suraksha Sanhita, 2023, which came into effect pending the present petitions), whose application is under dispute:-

"197. Prosecution of Judges and public servants.

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

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged

offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State of the State Government :

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.][Added by Act 43 of 1991, Section 2 (w.e.f. 2-5-1991).]

[Explanation. - For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, [section 376A,

section 376AB, section 376C, section 376D, section 376DA, section 376DB,][Inserted by Criminal Law (Amendment) Act, 2013]or section 509 of the Indian Penal Code.] [Inserted by Act 63 of 1980, Section 3 (w.e.f. 23.9.1980).]

(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."

14. It would also be appropriate to quote Article 14 of the Constitution of India hereunder:-

"The State shall not deny to any person equality before the

law or the equal protection of the laws within the territory of India."

15. It is not in dispute that Article 14 guarantees the right to equality before the law and equal protection of law to all citizens of India, regardless of their caste, creed, religion, gender or any other personal characteristic. However, it cannot be misconstrued to apply against the hierarchy in the administrative aspects. While Article 14 certainly forbids class legislation, however, it permits the reasonable classification of persons, objects, and transactions by law and the only restriction could be that such classification should not be arbitrary, artificial, or evasive.

16. Coming to the provision under Section 197(3) Cr.P.C., the words "shall apply to **such class or category of the members** of the Forces charged with the maintenance of public order" employed in Section 197(3) Cr.P.C. would enlighten the issue. This court feels that it is in the wisdom of legislation, the scope and application of the said provision has been restricted with a reasonable differentia. Only a conjoint and harmonious reading of both the provisions would throw some light on the dispute raised by the petitioners. If the provision under Article 14 is intended to be

construed in a narrow perspective and the words "**any person**" used therein are assumed to have exempted and excluded the classification and restriction in all the enactments, then no statute with any reasonable differentia can ever be implemented, especially, the provision under Section 197 Cr.P.C. extending a shelter of protection to the public servants against frivolous prosecution can never be applied. Moreover, if the contention of the petitioners to the effect that Section 197(3) Cr.P.C. is ultra vires to the object of Article 14 as it makes some classification is accepted, then, it would go to the root itself to construe that the whole provision of Section 197 Cr.P.C. itself is ultra vires to the object of Article 14. Such an illusion cannot be sustained.

17. If, as per the Rules or Regulations governing the Government servant, an authority of the Government has been vested with the power to appoint or dismiss such a Government servant, then it cannot be said that such a Government Servant is removable by or with the sanction of the Government so as to necessitate a prosecution sanction under Section 197 Cr.P.C. Section 197 Cr.P.C. does not contemplate prosecution sanction by a delegated authority competent to remove the Government servant from office. When some lower authority is by law, or rule or order, empowered to remove a public servant from office, then such public servant cannot be said

to be one removable by or with the sanction of the Government so as to necessitate prosecution sanction under Section 197 Cr.P.C.

18. Further, the protection under Section 197 Cr.P.C. accorded to the police personnel in the cadre of Inspector of Police in "Q" Branch as per the third proviso to Rule 4 of Tamil Nadu Police (Discipline & Appeal) Rules, 1955 has been sought to be referred by the petitioners to claim the similar protection on the rule of parity contending that such provision is violative of Article 14 of the Constitution of India.

19. Firstly, such a provision viz., Rule 4 of Tamil Nadu Police (Discipline & Appeal) Rules, 1955 has not been challenged by the petitioners. Further, when Section 197(3) empowers the State Government to issue notification directing for application of sub-section (2) to such class or category of the members of the Forces charged with the maintenance of public order, we feel that the provision under Rule 4 of Tamil Nadu Police (Discipline & Appeal) Rules, 1955, granting the benefit under Section 197(3) Cr.P.C. to the police personnel in the cadre of Inspector of Police "Q" Branch alone must be in consonance with such empowerment considering the nature of duties and responsibilities that might be assigned to such

personnel. Therefore, we are of the view that the petitioners cannot seek for a benefit that has been extended to the personnel of their cadre, however, posted in a different Wing with different duties and responsibilities.

20. Though a feeble attempt has been made on behalf of the petitioners that though their services could be put to an end by their superior on the powers delegated by the State, the Government being the revisional/appellate authority, the petitioners also could be construed to have been covered under the provision of Section 197 Cr.P.C., we are of the view that such revision or appeal arises only after a conclusion/decision by the superior of the petitioners to remove them from service and thereby, they cannot claim coverage under Section 197 Cr.P.C. similar to the class or category of officials covered under the said provision.

21. The legal provision being so, decisions enlisted above, rendered by various Division Benches of other States and our High Court had been brought to our notice on behalf of the petitioners in support of their contentions. While some of them had been rendered by Division Bench of various High Courts, some of them deal with the applicability of Section

197(3) to the members of the Forces charged with the maintenance of public order and we do not find any decision which deals with the scope of the words "*a public servant not removable from his office save by or with the sanction of the Government*" or arbitrariness or discrimination on the part of the legislature in making the classification in Section 197(3) Cr.P.C., whereas we find that decisions rendered by Full Bench and Constitution Bench of the Apex Court have been brought to our notice by the learned Additional Public Prosecutor, which clarifies the issue.

22. In ***Nagraj vs. State of Mysore*** (1963 SCC OnLine SC 249), a Full Bench of the Apex Court has held that the Inspector-General of Police can dismiss a Sub-Inspector, who is a police officer below the grade of Assistant Superintendent and thereby no sanction of the State Government for the prosecution of the appellant therein was necessary even if he had committed the offence alleged while acting or purporting to act in the discharge of his official duty.

23. Relying on the decision in ***Nagraj*** case, a Division Bench of the Apex Court in ***Fakhruzamma vs. State of Jharkhand*** (2013 (15) SCC

552) has taken a similar view.

24. In ***K.CH.Prasad vs. J.Vanalatha Devi*** (1987) 2 SCC 52, a Division Bench of the Apex Court, interpreting Section 197 Cr.P.C., has held as under:-

"6. It is very clear from this provision that this section is attracted only in cases where the public servant is such who is not removable from his office save by or with the sanction of the Government. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the Government. In this view of the matter even if it is held that appellant is a public servant still provisions of Section 197 are not attracted at all."

25. Relying on the decision in ***K.CH.Prasad***, another Division Bench of the Apex Court in ***S.K.Miglani vs. State NCT of Delhi*** (2019) 6 SCC 111, has held that the appellant therein being Manager of a nationalised bank was, though a public servant, was not removable from his office save

by or with the sanction of the Government and thereby he cannot claim protection under Section 197 Cr.P.C.

26. A Constitution Bench of the Apex Court has held in ***Dr.Subramanian Swamy vs. Director CBI and another*** (2014) 8 SCC 682 as under:-

"58.The Constitution permits the State to determine, by the process of classification, what should be regarded as a class for purposes of legislation and in relation to law enacted on a particular subject. There is bound to be some degree of inequality when there is segregation of one class from the other. However, such segregation must be rational and not artificial or evasive. In other words, the classification must not only be based on some qualities or characteristics, which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. Differentia which is the basis of classification must be sound and must have reasonable relation to the object of the legislation. If the

object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial.

.....

96. Various provisions under different statutes were referred to by Mr L. Nageswara Rao where permission of the Government is required before taking cognizance or for institution of an offence. **Section 197 Cr.P.C was also referred to, which provides for protection to Judges and public servants from prosecution except with the previous sanction by the competent authority. It may be immediately stated that there is no similarity between the impugned provision in Section 6-A of the DSPE Act and Section 197 CrPC.** Moreover, where challenge is laid to the constitutionality of a legislation on the bedrock or touchstone of classification, it has to be determined in each case by applying well-settled two tests: (i) that classification is founded on intelligible differentia, and (ii) that differentia has a rational relation with the object sought to be

achieved by the legislation. Each case has to be examined independently in the context of Article 14 and not by applying any general rule."

27. Placing reliance on the same decision viz., ***Dr.Subramanian Swamy's case***, the petitioners would contend that a classification made in Section 6A(1) of Delhi Special Police Establishment Act similar to the case on hand had been struck down by the Constitution Bench and thereby, though the provision involved in the case on hand viz., Section 197 Cr.P.C. has not been challenged, the ratio in the said case may be applied to the case on hand for interpreting Section 197 Cr.P.C.

28. On going through the decision rendered by the Constitution Bench in ***Dr.Subramanian Swamy vs. Director CBI and another*** (2014) 8 SCC 682, we find that it is on a different footing. The offence involved in the said case is one under the Prevention of Corruption Act, wherein the constitutional validity of Section 6-A of the Delhi Special Police Establishment Act, 1946 was under challenge sofar as it mandated approval of Central Government to conduct any enquiry or investigation into any offences alleged to have been committed under PC Act, 1988 by employees

of Central Government of level of Joint Secretary and above. The Apex Court, observing that such a classification on the basis of status in Government service is impermissible under Article 14 of the Constitution of India as it defeats the purpose of finding prima facie truth into the allegations of graft, which act amounts to offence under PC Act and it sidetracks the fundamental objective of the PC Act, 1988 to deal with corruption and act against senior public servants and that corrupt public servants whatever their status or position must be confronted with process of inquiry/investigation equally, held that such a legal provision is invalid and violative of Article 14 of the Constitution. Further, it appears that when Section 6A(1) of Delhi Special Police Establishment Act was sought to be equated with Section 197 Cr.P.C, it was clarified in that decision itself that there is no similarity between the impugned provision in Section 6-A of the DSPE Act and Section 197 Cr.P.C.

29. In the case on hand, the petitioners seek inclusion of themselves for the benefit of protection extended under Section 197 Cr.P.C., by way of a mandate for sanction to prosecute them for the IPC offences alleged to have been committed under the guise of discharge of duty, contending that such a provision, as of now, is discriminatory insofar as it extends the benefit to

the police officials only from the rank of Deputy Superintendent of Police. Therefore, in our view, the decision rendered in **Dr.Subramanian Swamy's** case cannot come to the rescue of the petitioners.

30. Another constitution Bench of the Apex Court in **Matajog Dobby vs. H.C.Bhari** (AIR 1956 SC 44), while dealing with the Appeals filed by the complainants against discharge of the accused on the basis that no sanction was obtained for prosecuting the accused therein, has observed as under:-

"Article 14 does not render Section 197 of the Criminal Procedure Code ultra vires as the discrimination is based upon a rational classification.

Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. It was argued that Section 197 of the Criminal Procedure Code vested an absolutely arbitrary power in the Government to grant or withhold sanction at their sweet-will and pleasure, and the legislature did not lay down or even indicate any guiding principles to control the exercise of the discretion. There is no question of any discrimination between one person and

another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction. If the Government gives sanction against one public servant but declines to do so against another, then the Government servant against whom sanction is given may possibly complain of discrimination. But the petitioners who are complainants cannot be heard to say so, for there is no discrimination as against any complainant. It has to be borne in mind that a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the government and not in a minor official."

31. In the above case, though the Constitution Bench had dealt with the question of discrimination raised peculiarly by the complainant, clarified that the complainant, who knocked at the doors of the court, cannot be heard to say that the provision under Section 197 Cr.P.C. is discriminatory and if at all, it can be raised by the public servant. Further, it has clarified

that a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the Government and not in a minor official, while affirming that Article 14 does not render Section 197 of the Criminal Procedure Code ultra vires as the discrimination is based upon a rational classification.

32. The issue on hand is squarely covered in ***K.N.Sukla vs. Navnait Lal Mani Lal Bhat and another*** (AIR 1967 SC 1331), wherein another Constitution Bench of the Apex Court has held as under:-

"7. It was suggested on behalf of the appellant that even if the Railway Board had power to remove the appellant from his office and even if it was acting under the powers delegated to it, the principle of the maxim qui facit per alium facit per se applies to the case and the appellant must be deemed to be removable only by or with the sanction of the Central Government within the meaning of Section 197 of the Criminal Procedure Code. We do not think there is any substance in this argument. If once the Central Government has delegated its power to another authority with regard to appointment and removal of a public servant, then for the

purpose of Section 197 of the Criminal Procedure Code the public servant concerned will not be treated to be a public servant "not removable from his office except by or with the sanction of the Central Government", within the meaning of that section. A similar argument was advanced in Afzalur Rahman v. King-Emperor [(1943) FCR 7] in which it was held that a police officer who could be dismissed by the Deputy Inspector-General of Police under the statutory rules and regulations was not a person in "not removable from office except by or with the sanction of the Provincial Government" within the meaning of Section 197 of the Criminal Procedure Code and that sanction under that section was not, therefore, necessary for prosecuting such an officer for an offence alleged to have been committed by him. Varadachariar, J. speaking for the Federal Court in that case observed that the provisions of Section 241(1)(b) and Section 240(2) of the Government of India Act must also be understood in the light of the practice prevailing in India under which the power to appoint and dismiss particular classes of officers is vested in particular authorities.

Otherwise there is the danger of our ignoring the policy of the legislature in limiting the class of officers entitled to this protection and of making Section 197 of the Criminal Procedure Code available to all public officers. We accordingly reject the argument of the appellant on this aspect of the case."

33. The settled principle on the issue being so, a decision rendered by a Division Bench of the Apex Court in ***Indradevi vs. State of Rajasthan*** (2021) 8 SCC 768, has been brought to our notice on behalf of the petitioners, pointing out that it has been held therein as under:-

"11. We have to apply the aforesaid test to the facts of the present case. In that behalf, the factum of Respondent 2 not being named in the FIR is not of much significance as the alleged role came to light later on. However, what is of significance is the role assigned to him in the alleged infraction i.e. conspiring with his superiors. What emerges therefrom is that insofar as the processing of the papers was concerned, Surendra Kumar Mathur, the Executive Officer, had put his initials to the relevant papers which was

held in discharge of his official duties. Not only that, Sandeep Mathur, who was part of the alleged transaction, was also similarly granted protection. The work which was assigned to Respondent 2 pertained to the subject-matter of allotment, regularisation, conversion of agricultural land and fell within his domain of work. In the processing of application of Megharam, the file was initially put up to the Executive Officer who directed the inspection and the inspection was carried out by the Junior Engineer and only thereafter the Municipal Commissioner signed the file. The result is that the superior officers, who have dealt with the file, have been granted protection while the clerk, who did the paper work i.e. Respondent 2, has been denied similar protection by the trial court even though the allegation is of really conspiring with his superior officers. Neither the State nor the complainant appealed against the protection granted under Section 197 CrPC qua these two other officers.

12. *We are, thus, not able to appreciate why a similar protection ought not to be granted to Respondent 2 as was*

done in the case of the other two officials by the trial court and High Court, respectively. The sanction from the competent authority would be required to take cognizance and no sanction had been obtained in respect of any of the officers. It is in view thereof that in respect of the other two officers, the proceedings were quashed and that is what the High Court has directed in the present case as well."

34. Referring to the above decision, it was argued that the benefit under Section 197 Cr.P.C. has been extended to a clerk on parity of treatment of all accused and proceedings against the superior officers, who were alleged co-conspirators, having been quashed for non-obtaining of sanction, and a Division Bench had upheld the decision of the High Court in quashing the proceedings against the junior officer, an alleged co-conspirator on the same ground of non-obtaining of sanction and thereby the petitioners are also entitled to the benefit under Section 197 Cr.P.C.

35. A keen perusal of the above judgment would show that it is a clear case of issuance of forged lease and conspiracy of accused with his superiors. Though normally, non-obtaining of sanction in respect of such a junior officer will not be an hindrance for prosecuting against such officer, the alleged conspiracy among all the accused including the junior officer in

committing the offence appears to have been the basis for arriving at such a conclusion to extend the benefit of Section 197 Cr.P.C. to the junior officer also. The application of principle of parity for such a peculiar factual situation cannot be sought to be the basis for a legal issue, especially, when the consistent ratio of the Apex Court is to the effect that prior sanction is necessary only in respect of public servants, who are removable by or with the sanction of the Government.

36. In view of the consistent decisions rendered by the Full Bench and Constitution Benches of the Apex Court time and again, which still holds water, we find that the police officer from the rank of Constable to Inspector of Police are not entitled to protection under Section 197 Cr.P.C. and the plea of the accused to interpret the word 'removable by Government' employed in the said provision in broad perspective by re-evaluating the law laid down by this Court in 1979 (1) MLJ (Crl.) 705 & CDJ 2017 MHC 6889 cannot be entertained and we confine ourselves with this without expressing any view on the decisions rendered otherwise as we feel that every case stands on its own footing.

[A.D.J.C., J.] [K.R.S., J.]

24.07.2024

ssk.

A.D.JAGADISH CHANDIRA, J.
AND
K.RAJASEKAR, J.

ssk.

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