Reserved on : 12.06.2024
Pronounced on : 05.07.2024

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.5232 OF 2024

BETWEEN:

1 . SRI M.K.THAMMAIAH
AGED ABOUT 58 YEARS,
S/O KUSHALAPPA M.K.,
THE THEN DEPUTY
SUPERINTENDENT OF POLICE,
ACB, KHANIJA BHAVANA,
RACE COURSE ROAD,
BENGALURU – 560 001
PRESENTLY WORKING AS
ADDL. SUPERINTENDENT OF POLICE,
HASSAN, HASSAN DISTRICT – 573 201.

2 . SRI S.R.VEERENDRA PRASAD
AGED ABOUT 46 YEARS,
S/O LATE SANNARANGAPPA,
THE THEN POLICE INSPECTOR,
ACB, KHANIJA BHAVANA,
RACE COURSE ROAD,
BENGALURU – 560 001.
PRESENTLY WORKING AS
CHIEF INTELLIGENCE OFFICER,
BENGALURU CITY.

3 . SRI PRAKASH R.,
AGED ABOUT 44 YEARS,
S/O RAMANJANEYALU,
THE THEN DEPUTY
SUPERINTENDENT OF POLICE,
ACB, KHANIJA BHAVANA,
RACE COURSE ROAD,
BENGALURU – 560 001.
PRESENTLY WORKING AS
ASSISTANT COMMISSIONER OF POLICE
SHESHADRIPURAM SUB- DIVISION,
BENGALURU – 560 020.

4 . SRI MANJUNATH G. HUGAR
AGED ABOUT 42 YEARS,
S/O SRI GURUNATH,
THE THEN INSPECTOR OF POLICE
ACB, KHANIJA BHAVANA,
RACE COURSE ROAD,
BENGALURU – 560 001
PRESENTLY WORKING AS
INSPECTOR OF POLICE,
KUMBALAGODU POLICE STATION – 560 074.

5 . SRI VIJAYA H.,
AGED ABOUT 46 YEARS,
S/O REVANA SIDDAPPA
THE THEN DEPUTY
SUPERINTENDENT OF POLICE,
ACB KHANIJA BHAVANA,
RACE COURSE ROAD,
BENGALURU – 560 001
PRESENTLY WORKING AS
ASSISTANT COMMISSIONER OF POLICE,
CITY SPECIAL BRANCH,
BENGALURU CITY.

6 . MS. UMA PRASANT
AGED ABOUT 41 YEARS,
W/O SRI PRASANT KUMAR S.B.,
THE THEN DEPUTY
SUPERINTENDENT OF POLICE,
ACB, KHANIJA BHAVANA,
RACE COURSE ROAD,
BENGALURU – 560 001
PRESENTLY WORKING AS
SUPERINTENDENT OF POLICE,
DAVANAGERE DISTRICT – 577 001.

7 . SRI SEEMANTHKUMAR SINGH
AGED ABOUT 54 YEARS,
S/O LATE SUSHIL PRASAD SINGH
THE THEN ADGP,
ACB, KHANIJA BHAVANA,
RACE COURSE ROAD,
BENGALURU – 560 001
PRESENTLY WORKING AS
ADGP, BENGALURU METROPOLITAN
TASK FORCE (BMTF),
BENGALURU – 560 002.

... PETITIONERS

(BY SRI C.V.NAGESH, SR.ADVOCATE FOR
SRI RAGHAVENDRA K., ADVOCATE)

AND:

SRI. A. MOHAN KUMAR
AGED ABOUT 47 YEARS,
S/O LATE ASHWATHAIAH,
RESIDING AT NO.265,
2ND BLOCK, 6TH MAIN,
R.T.NAGAR,

BENGALURU – 560 032.

... RESPONDENT

(BY SRI MURTHY D.NAIK, SR.ADVOCATE A/W
SRI ARNAV BAGALAWADI, ADVOCATE FOR
SRI K.M.SUBAIR, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 30.05.2024 PASSED IN THE CASE TAKING COGNIZANCE OF THE OFFENCE THAT ARE MADE PENAL UNDER SEC.167, 219, 384, 448, 465, 466, 468, 469, 471, 506, 511, 120B R/W 34 OF IPC AND SEC.13 OF P.C ACT THAT ARE COMPLAINED BY THE RESPONDENT AGAINST THE PETITIONERS IN THE PRIVATE COMPLAINT FILED BY HIM BEFORE THE COURT AND DIRECTING THE REGISTRY TO PUT UP THE RECORD OF THE CASE BEFORE THE COURT ON 04.06.2024 FOR THE PURPOSE OF ISSUANCE OF PROCESS AGAINST THE PETITIONERS OF THEIR APPEARANCE.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.06.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners 1 to 7 are before this Court calling in question an order dated 30-05-2024 passed by the XXIII Additional City Civil & Sessions Judge & Special Judge (Prevention of Corruption Act),

Bengaluru in P.C.R.No.11 of 2024, by which the Special Judge takes cognizance of the offences punishable under Sections 167, 219, 384, 448, 465, 466, 468, 469, 471, 506, 511, 120B r/w Section 34 of the Indian Penal Code and under Section 13 of the Prevention of Corruption Act, 1988 ('the Act' for short) and issues summons to the petitioners.

2. Heard Sri C. V. Nagesh, learned senior counsel appearing for the petitioners and Sri Murthy D. Naik, learned senior counsel appearing for the respondent.

3. The facts adumbrated are as follows:

The petitioners claim to be officers of the then Anti Corruption Bureau ('ACB' for short), Bangalore City. A crime comes to be registered in Crime No.55 of 2021 against unknown persons on 19-11-2021. This is based on a complaint with regard to the touts and middlemen belonging to sites and other properties of the Bangalore Development Authority; it was more so with regard to distribution of sites to the general public and fraud taking place

therein. Several allegations were made with regard to bogus or forged documents being created for the purpose of defrauding the common man and being completely hand in glove with the officers of the Bangalore Development Authority. The crime comes to be registered for offences punishable under Sections 7(a), 7(A), 8, 12, 13(1)(a) r/w 13(2) of the Act. During the course of investigation, it appears that the 3rd petitioner who was then officer of the ACB in the cadre of Deputy Superintendent of Police, obtains a search warrant from the hands of the learned Magistrate to conduct search in the premises of the respondent. It was said to be on a rented premises and nothing was found at the time of search. A second search was conducted in the house and office of the respondent/ complainant. Here the search party lay hands upon certain documents, cash, jewellery and several other items and they were all sought to be seized.

4. During the pendency of these proceedings, the respondent knocks at the doors of this Court in Writ Petition No.7994 of 2022 seeking quashment of FIR in Crime No.55 of 2021 on the ground that house of the respondent was searched without registering the

crime. This Court interdicts further action against the respondent. Finally a coordinate Bench of this Court allows the writ petition, quashes the FIR *qua* the respondent in terms of its order dated 02-02-2023. After quashment of said proceedings, the complainant knocks at the doors of the learned Special Judge for registering a private complaint against the petitioners invoking Section 200 of the Cr.P.C. The learned Special Judge, by a detailed order, after recording the sworn statement of the respondent takes cognizance of the offences afore-quoted and directs registration of the case and putting it up for furnishing list of witnesses and issuance of process to accused 1 to 7/petitioners. The matter was directed to be listed on 04-06-2024. Petitioners herein/Accused 1 to 7 have knocked at the doors of this Court calling in question the order of taking cognizance for the aforesaid offences.

5. The learned senior counsel Sri C.V.Nagesh would vehemently contend that the petitioners are high ranking officials/officers of the Indian Police Service. After registration of the crime in furtherance of investigation, the 3rd petitioner obtains a search warrant in accordance with law at the hands of the

concerned Court. Accordingly, a search was conducted in a premises where the diary was found and in the diary the name of the respondent was found. Then leads the search party to the rented premises of the respondent. They did not find anything there. They enter the house and office of the respondent and found some incriminating materials. The respondent had immediately rushed to this Court. This Court allows the criminal petition preferred by the respondent and reserves liberty to continue the investigation in the event they found any incriminating material.

6. It is the submission of the learned senior counsel that the investigation still continues and the respondent is not completely absolved. This would be the submission on merits of the matter. He would contend that all the officers have conducted these proceedings purely in the discharge of their official duties being officers of the ACB. If it is in the discharge of their official duty, the concerned Court could not have taken cognizance of the offence, for the aforesaid offences including under the Act, without at the outset sanction for such prosecution being placed before the concerned Court under Section 19 of the Act and Section 197 of the Cr.P.C., as

offences beyond the Act are also taken cognizance of. He would submit that, if Government grants sanction, it was well within the Court to continue the proceedings. Since there is no sanction cognizance could not have been taken. Thus, he would restrict his submission to the quashment of the order of taking cognizance.

7. Per contra, the learned senior counsel Sri Murthy D. Naik representing the respondent would vehemently refute the submission to contend that without rhyme or reason, the house of the respondent is searched, even without naming him as an accused in any crime. Even as on today he is not an accused in any crime. Therefore, it has violated the right to life of the respondent. A coordinate Bench of this Court has clearly held, continuation of investigation against this respondent, is violative of Article 21 of the Constitution of India. For the act of those persons in taking the right to life of the respondent for a ride, the crime is registered. Sanction for such prosecution would not be required, as what is alleged is forgery, criminal conspiracy, extortion and house trespass. These are not the offences that would come about in the discharge of official duties. Cognizance is also taken for the offence

under Section 13 of the Act for the reasons that accused 1 to 7 had demanded money to close the case against the respondent. He would submit that this Court should permit further inquiry at the hands of the concerned Special Judge and not interfere in the peculiar facts of this case.

8. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record. In furtherance of the respective contentions, what merits consideration is,

"Whether the concerned Court could have taken cognizance of the offences punishable under the penal provisions of the IPC and under the Act, without a sanction under Section 19 of the Act or under Section 197 of the Cr.P.C., being placed before it?"

9. A crime in Crime No.55 of 2021 is registered for offences punishable as afore-quoted. The reason is the complaint registered by the Police Inspector of the ACB. The complaint dated 19-11-2021 reads as follows:

"ದಿನಾಂಕ: 19–11–2021

ರವರಿಗೆ,

ಠಾಣಾಧಿಕಾರಿಗಳು,
ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳ,
ಬೆಂಗಳೂರು ನಗರ ಪೊಲೀಸ್ ಠಾಣೆ,
ಬೆಂಗಳೂರು.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದ ಕಚೇರಿಗಳಲ್ಲಿ ನಡೆಯುತ್ತಿರುವ ಅಕ್ರಮ ವ್ಯವಹಾರಗಳ ಕುರಿತಂತೆ ಕ್ರಮ ಜರುಗಿಸುವ ಕುರಿತು.

––––*

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳ, ಬೆಂಗಳೂರು ನಗರ ಠಾಣೆಯಲ್ಲಿ ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್ ಆಗಿ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಿರುವ ಎಸ್.ಆರ್.ವೀರೇಂದ್ರಪ್ರಸಾದ್ ಆದ ತಮ್ಮಲ್ಲಿ ಮನವಿ ಮಾಡಿಕೊಳ್ಳುವುದೇನೆಂದರೆ, ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳದ ಕಚೇರಿಗೆ ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದ ಅಧಿಕಾರಿಗಳ ವಿರುದ್ಧವಾಗಿ ಹಲವಾರು ಮೌಖಿಕ ಕರೆಗಳು ಹಾಗೂ ಮೌಖಿಕ ದೂರುಗಳು ಬರುತ್ತಿದ್ದರ ಹಿನ್ನಲೆಯಲ್ಲಿ ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದಲ್ಲಿ ನಡೆಯುತ್ತಿರುವ ಅಕ್ರಮ ವ್ಯವಹಾರಗಳ ಕುರಿತಂತೆ ಭಾತ್ಮೀದಾರರರ ಮುಖೇನ ಹಾಗೂ ಖುದ್ದಾಗಿ ಮಾಹಿತಿ ಸಂಗ್ರಹಿಸಲಾಗಿ,

ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದಲ್ಲಿ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಿರುವ ಕೆಲವು ಅಧಿಕಾರಿಗಳು ಖಾಸಗಿ ವ್ಯಕ್ತಿಗಳಿಗೆ ಅಕ್ರಮವಾಗಿ ಅನುಕೂಲವಾಗುವಂತೆ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ. ಕೆಲವು ಅಧಿಕಾರಿಗಳು ಭ್ರಷ್ಟ ಹಾಗೂ ಕಾನೂನು ಬಾಹಿರ ಸಾಧನಗಳ ಮೂಲಕ ಅಪ್ರಾಮಾಣಿಕವಾಗಿ ಸಾರ್ವಜನಿಕರಿಗೆ ನಿವೇಶನಗಳನ್ನು ಹಂಚಿಕೆ ಮಾಡುತ್ತಿದ್ದು, ನಿವೇಶನಗಳ ಹಂಚಿಕೆ ಕಾಲದಲ್ಲಿ ಸಿ.ಎ ರಿಜಿಸ್ಟರ್‌ಗಳಲ್ಲಿ ಅಕ್ರಮ ಮತ್ತು ಅನಧಿಕೃತವಾಗಿ ತಿದ್ದುಪಡಿಸಿ ಮಾಡುವ ಮೂಲಕ ತಮಗೆ ಬೇಕಾದವರಿಗೆ ಅನುಕೂಲ ಮಾಡಿಕೊಡುತ್ತಿರುವುದು ತಿಳಿದುಬಂದಿರುತ್ತದೆ. ಸರ್ವಜನಿಕರಿಂದ ವಸೂಲಾಗುವ ಶುಲ್ಕಗಳನ್ನು ಆಧಾರ ರಹಿತವಾಗಿ/ಕಲ್ಪಿತವಾಗಿ ನಮೂಡಿದಿಸುತ್ತಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.

ನಿವೇಶನಗಳನ್ನು ಮಂಜೂರು ಮಾಡುವ ಲೀಸ್ ಕಂ ಸೇಲ್ ಡೀಡ್ (ಎಲ್.ಸಿ.ಎಸ್.ಡಿ) ನಲ್ಲಿ ನಮೂದಿಸಿರುವ ಹೆಸರಿಗೂ, ಅಬ್ಸ್‌ಲ್ಯೂಟ್ ಸೇಲ್ ಡೀಡ್ (ಎ.ಎಸ್.ಡಿ) ನಲ್ಲಿ ನಮೂದಿಸಿರುವ ಹೆಸರುಗಳಿಗೂ ವ್ಯತ್ಯಾಸ ಇರುವುದು ತಿಳಿದುಬಂದಿದ್ದು, ಬಿಡಿಎ ಅಧಿಕಾರಿಗಳು ತಮಗೆ ಬೇಕಾದವರಿಗೆ ಅನುಕೂಲ ಮಾಡಿಕೊಡುತ್ತಿರುವುದು ತಿಳಿದುಬಂದಿರುತ್ತದೆ. ಖೊಟ್ಟಿ ದಾಖಲಾತಿಗಳನ್ನು ಸೃಷ್ಟಿಸಿ ಈಗಾಗಲೇ ಹಂಚಿಕೆ ಮಾಡಲಾಗಿರುವ ನಿವೇಶನಗಳನ್ನು ಪುನ: ಅನಧಿಕೃತವಾಗಿ ಬೇರೆ ವ್ಯಕ್ತಿಗಳಿಗೆ ಹಂಚಿಕೆ ಮಾಡುತ್ತಿರುವುದು ತಿಳಿದುಬಂದಿರುತ್ತದೆ.

ಸಾರ್ವಜನಿಕರಿಂದ ಸಂಗ್ರಹಿಸುವ ಹಣದಲ್ಲಿ ನಿಗದಿತ ಮೊತ್ತವನ್ನು ನಿಗದಿತ ಅವಧಿಯಲ್ಲಿ ಸರ್ಕಾರದ ಖಜಾನೆಗೆ ಜಮಾ ಮಾಡದೆ ಇರುವುದು ತಿಳಿದುಬಂದಿರುತ್ತದೆ. ನಿವೇಶನ ಹಂಚಿಕೆಯಲ್ಲಿ ಪಾರದರ್ಶಕತೆ ಇಲ್ಲದೆ ಇರುವುದು ಕಂಡುಬಂದಿದ್ದು, ಹಂಚಿಕೆ ಸಮಯದಲ್ಲಿ ಪ್ರಾಧಿಕಾರದ ನಿಯಮಗಳನ್ನು ಪಾಲಿಸದೇ ಕಾನೂನು ಬಾಹಿರವಾಗಿ ಹಂಚಿಕೆ ಮಾಡುತ್ತಿದ್ದು, ಇದರಿಂದ ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರಕ್ಕೆ / ಸರ್ಕಾರಕ್ಕೆ ಅಪಾರ ಪ್ರಮಾಣದ ಆರ್ಥಿಕ ನಷ್ಟವುಂಟಾಗಿರುವುದು

ತಿಳಿದುಬಂದಿರುತ್ತದೆ. ನಿವೇಶನಗಳ ಮರು ಮಂಜೂರಾತಿಯಲ್ಲಿ ಸಾಕಷ್ಟು ಲೋಪ ದೋಷಗಳು ಇರುವ ಬಗ್ಗೆ ತಿಳಿದುಬಂದಿರುತ್ತದೆ. ಬದಲಿ ನಿವೇಶನಗಳನ್ನು ಹಂಚಿಕೆ ಮಾಡಲು ಕಾನೂನಿನಲ್ಲಿ ಅವಕಾಶ ಇಲ್ಲದ ಸಂದರ್ಭದಲ್ಲೂ ಕೂಡ ಕಾನೂನು ಬಾಹಿರವಾಗಿ ಬದಲಿ ನಿವೇಶನಗಳನ್ನು ಅಕ್ರಮ ಹಂಚಿಕೆ ಮಾಡಿರುವುದು ತಿಳಿದು ಬಂದಿರುತ್ತದೆ.

ಹೀಗೆ ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದ ಕೆಲವು ಅಧಿಕಾರಿಗಳು, ತಮ್ಮ ಅಧಿಕಾರವನ್ನು ದುರುಪಯೋಗಪಡಿಸಿಕೊಂಡು ಖಾಸಗಿ ವ್ಯಕ್ತಿಗಳೊಂದಿಗೆ ಶಾಮೀಲಾಗಿ, ಬಿಡಿಎಗೆ /ಸರ್ಕಾರಕ್ಕೆ ಸಂಬಂದಿಸಿದ ನಿವೇಶನಗಳನ್ನು ಬಿಡಿಎ ನಿಯಮಗಳಿಗೆ ವಿರುದ್ದವಾಗಿ ತಮ್ಮ ಸ್ವಹಿತಾಸಕ್ತಿಗಾಗಿ ಖಾಸಗಿಯವರಿಗೆ ಭ್ರಷ್ಟ ಮತ್ತು ಕಾನೂನು ಬಾಹಿರ ಸಾಧನಗಳ ಮೂಲಕ ತಪ್ಪಾಗಿ ಮತ್ತು ಅಪ್ರಮಾಣಿಕವಾಗಿ ಹಂಚಿಕೆ ಮಾಡುತ್ತಿದ್ದು, ತಮಗೆ ವಹಿಸಿಕೊಟ್ಟಿರುವ ಮತ್ತು ತಮ್ಮ ನಿಯಂತ್ರಣದಲ್ಲಿರುವ ಸರ್ಕಾರಿ ಸ್ವತ್ತನ್ನು ಅಪ್ರಾಮಾಣಿಕವಾಗಿ ಮತ್ತು ಮೋಸದಿಂದ ದುರುಪಯೋಗಪಡಿಸಿಕೊಂಡು ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರ/ಸರ್ಕಾರಕ್ಕೆ ಕೋಟ್ಯಾಂತರ ರೂಪಾಯಿಗಳ ನಷ್ಟವುಂಟು ಮಾಡುತ್ತಿರುವುದು ತಿಳಿದುಬಂದಿರುತ್ತದೆ.

ಬಿ.ಡಿ.ಎನ ಭೂಸ್ವಾಧೀನ ವಿಭಾಗದ ಅಧಿಕಾರಿಗಳು ಮತ್ತು ಅಧಿಕಾರವನ್ನು ದುರುಪಯೋಗಪಡಿಸಿಕೊಂಡು ಸಾಕಷ್ಟು ಅವ್ಯವಹಾರಗಳನ್ನು ನಡೆಸುತ್ತಿದ್ದು, ವಶಪಡಿಸಿಕೊಂಡ ಜಮೀನುಗಳಿಗೆ ಪರಿಹಾರವನ್ನು ನೀಡುವಲ್ಲಿ ದೊಡ್ಡ ಪ್ರಮಾಣದ ಅವ್ಯವಹಾರವನ್ನು ನಡೆಸುತ್ತಿರುವುದಾಗಿ ತಿಳಿದುಬಂದಿರುತ್ತದೆ. ಅಲ್ಲದೆ ಬಿಡಿಎ ದಲ್ಲಿ ಅಕ್ರಮವಾಗಿ ಹಣದ ವ್ಯವಹಾರ ನಡೆಯುತ್ತಿರುವುದಾಗಿ ಸಹ ಮಾಹಿತಿ ತಿಳಿದುಬಂದಿರುತ್ತದೆ.

ಬಿಡಿಎ ಅಧಿಕಾರಿಗಳ ಅಪ್ರಮಾಣಿಕತನದಿಂದ ನೊಂದಿರುವ ಸಾರ್ವಜನಿಕರು, ನಿವೇಶನಗಳ ಅರ್ಜಿದಾರರು, ಭೂಸ್ವಾಧೀನದಲ್ಲಿ ಜಮೀನು ಕಳೆದುಕೊಂಡ ರೈತರುಗಳು ಬಿಡಿಎ ಅಧಿಕಾರಿಗಳ ವಿರುದ್ದ ದೂರು ನೀಡಿದ್ದಲ್ಲಿ ಮುಂದೆ ಬಿಡಿಎದಲ್ಲಿ ಬಾಕಿ ಇರುವ ಸದರಿಯವರ ಆಸ್ತಿಗೆ ಸಂಬಂದಿಸಿದ ಕೆಲಸಗಳಿಗೆ ತೊಂದರೆಯಾಗಬಹುದೆಂಬ ಕಾರಣದಿಂದ ದೂರು ನೀಡಲು ಹಿಂಜರಿಯುತ್ತಿರುವುದು ಕಂಡುಬರುತ್ತಿರುತ್ತದೆ.

ಆದುದರಿಂದ ಸಾರ್ವಜನಿಕ ಹಿತದೃಷ್ಟಿಯಿಂದ ಈ ಬಗ್ಗೆ ಪ್ರಕರಣವನ್ನು ದಾಖಲಿಸಿಕೊಂಡು ಕೂಡಲೆ ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದ ಭೂಸ್ವಾಧೀನ ವಿಭಾಗ ಮತ್ತು ಉಪ ಕಾರ್ಯದರ್ಶಿ – 1, ಉಪ ಕಾರ್ಯದರ್ಶಿ – 2, ಉಪ ಕಾರ್ಯದರ್ಶಿ–3 ಮತ್ತು ಉಪ ಕಾರ್ಯದರ್ಶಿ–4 ರವರುಗಳ ಕಛೇರಿಗಳ ಮೇಲೆ ದಾಳಿ ಮಾಡಿದಲ್ಲಿ ಅಕ್ರಮ ಹಣದ ವ್ಯವಹಾರ, ಮದ್ಯವರ್ತಿಗಳ ಹಾಗು ಅಕ್ರಮ ದಾಖಲೆಗಳು ಇತ್ಯಾದಿಗಳು ದೊರಕವು ಸಾದ್ಯತೆಗಳಿರುತ್ತವೆ.

ಸಹಿ/– 19/11/2021
[ಎಸ್.ಆರ್.ವೀರೇಂದ್ರಪ್ರಸಾದ್]
Police Inspector
Anti-Corruption Bureau
Bengaluru City Police Station
Bengaluru."
(sic)

(Emphasis added)

It is upon the said complaint a search warrant is obtained from the hands of the learned Magistrate. The search conducted during investigation leads the search party to a diary. The diary is said to have contained the name of the respondent. Then leads the search party to the house and office of the respondent. A detailed search and seizure panchanama is drawn and several documents, gold and other jewelry are found which are all recorded in the panchanama. Therefore, the office and house of the respondent was searched on the strength of the aforesaid warrant. The search is conducted on 22-03-2022 and crime is registered in Crime No.55 of 2021 on 19-11-2021. Therefore, the search is conducted during the course of investigation, on the strength of a search warrant four months after registration of the crime. The respondent approaches this Court in W.P.No.7994 of 2022. This Court interdicts further investigation against the respondent. The coordinate Bench in terms of its order dated 02-02-2023 allowed the writ petition. It becomes germane to notice the order so passed by the coordinate Bench. It reads as follows:

"…. …. ….

5. Considered the submissions.

6. The Hon'ble Supreme Court in the case of P.Sirajuddin (supra) at para-17 has held as follows:

> *"17. In our view the procedure adopted against the appellant before the laying of the first information report though not in terms forbidden by law, was so unprecedented and outrageous as to shock one's sense of justice and fairplay. No doubt when allegations about dishonesty of a person of the appellant's rank were brought to the notice of the Chief Minister it was his duty to direct as enquiry into the matter. The Chief Minister in our view pursued the right course. The High Court was not impressed by the allegation of the appellant that the Chief Minister was moved to take an initiative at the instance of person who was going to benefit by the retirement of the appellant and who was said to be a relation of the Chief Minister. The High Court rightly held that the relationship between the said person and the Chief Minister, if any, was so distant that it could not possibly have influenced him and we are of the same view. Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can of taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. The means adopted no less than the end to be achieved must be impeccable. In ordinary departmental proceedings against a Government servant charged with delinquency, the normal practice before the*

> *issue of a charge- sheet is for some one in authority to take down statements of persons involved in the matter and to examine documents which have a bearing on the issue involved. It is only thereafter that a charge-sheet is submitted and a full-scale enquiry is launched. When the enquiry is to be held for the purpose of finding out whether criminal proceedings are to be restored to the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the delinquent officer and documents bearing on the same to find out whether there is prima facie evidence of guilt of the officer. Thereafter the ordinary law of the land must take its course and further inquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report.*

7. The coordinate Bench of this Court in the case of K.R. Kumar Naik supra at paras-13 to 18 has held as follows:

> *13. The FIR is registered on 16-03-2022 and source information report is also drawn on 16-03-2022 which is ostensibly done at a jiffy. The Anti-Corruption Bureau which performs a very significant role in checking corruption amongst public servants cannot indulge itself in such casual act of drawing up the source information report on the instant, registering the FIR and conducting the search. The entire narration of allegation which would become criminal misconduct against the petitioner is on the basis of the records found in somebody else's house in connection with someone else's crime. Such a source information report against the petitioner is no report in the eye of law.*
>
> *14. The law also contemplates conduct of a preliminary inquiry in cases of corruption alleged as against public servants. The Apex Court right from the judgment in the case of P. SIRAJUDDIN v. STATE OF MADRAS[1] has clearly held that before a public servant, whatever be his status, is publicly charged with acts of dishonesty, some suitable preliminary inquiry into the allegations by a responsible officer should be made. It could be in the nature of source information report or otherwise.*

8. The criminal prosecution against the petitioner - accused herein was launched on the basis of diary seized from the office of the Bangalore Development Authority, in which, an entry is allegedly made stating that, the petitioner had taken four files and returned one file and

the phone number of the petitioner is reflected in the entry.

9. On the basis of the entry in the diary, the first search was conducted on the premises of the petitioner and no incriminating materials were found nor seized during the search. On the same day, search warrant was issued stating that, at the time of searching, the premises of one Sri Ashwath, it was revealed that, incriminating documents will be recovered along with cash and other documents from the petitioner. Thereafter, the second search was conducted on a different premises of the petitioner and except, the property related documents no incriminating materials were found or seized from the petitioner. The coordinate Bench in the case of K R Kumar Naik (supra) has held that criminal prosecution cannot be launched on the basis of the records found in somebody else's house in connection with someone else's crime.

10. The entry in the diary cannot be the sole basis for conducting investigation in the absence of any other corroborative material to establish that the petitioner along with the officials of the BDA was involved in allotment of sites illegally. Though no incriminating materials were found nor seized, the respondent - Lokayukta has not closed the investigation against the petitioner, and the petitioner is constantly put under an apprehension that the premises will be searched under the guise of investigation which would infringe his right enshrined in Article 21 of the Constitution of India. Unless and until any incriminating materials are available against the petitioner, the respondent - Lokayukta cannot repeatedly conduct search of the premises belonging to the petitioner under the guise of investigation of crime registered against the officials of the BDA. Hence, the continuation of the investigation under the impugned FIR will be an abuse of process of law and violates Article 21 of the Constitution of India.

Accordingly, I pass the following:

ORDER

i) Writ Petition is allowed.

ii) The impugned FIR in Crime No.55/2021 registered by the respondent No.2 pending on the file of the learned 23rd Additional City Civil and Sessions Court, Bangalore City (CCH-24) is hereby quashed.

iii) Liberty is reserved with the respondent – Lokayukta to proceed against the petitioner in accordance with law, in the event if any incriminating materials are found against him with regard to allotment of sites illegally by the BDA."

(Emphasis supplied)

The coordinate Bench holds that unless and until any incriminating material is available against the respondent, continuation of investigation will be an abuse of the process of law and would violate Article 21 of the Constitution of India. Therefore, liberty was reserved to proceed in accordance with law, if need arises.

10. The respondent, on 06-12-2023, writes to the Competent Authority seeking accord of sanction to prosecute these petitioners. The communication was founded upon the judgment of the Apex Court in the case of K.S.Puttaswamy and several enactments. The said communication has remained a communication even today. The respondent then knocks at the doors of the Special Court by

registering a private complaint which is registered as P.C.R.No.11 of 2024. The learned Special Judge, in terms of his order dated 30-05- 2024 takes cognizance of the offences. A few paragraphs of the reasons for taking cognizance become germane to be noticed and they read as follows:

"…. …. ….

> *13. The factual circumstances emanating from the discussion and **annexure-I to VII** prima-facie discloses the arbitrariness on the part of accused No.1 to 5, throwing away the known procedure to the wind, sidelining the intended investigation as against the BDA officials who are facing the serious allegations of corrupt activities, failure to enquire into the allegations so also the so-called diary at **annexure-V** and the entries therein including the person who is responsible for those entries etc, before proceeding against the complainant who is a private person. Thus prima-facie, the allegation of misuse of powers, criminal mis-conduct, house trespass, criminal intimidation, attempt to extort the money, fabrication of documents as a weapon by accused persons, suppression of the truth from the court to proceed against a private person who claims to be an unconcerned to the allegations etc. gets strengthened. The 6th and 7th accused were admittedly the supervising authority having control over accused No.1 to 5 at the relevant period. Therefore and at this stage, the allegation of the complainant that, all the illegalities committed by accused No.1 to 5 was under the guidance and instructions of accused No.6 and 7 in furtherance of their conspiracy and common intention holds some force. Therefore, the alleged illegalities by the public servants would be beyond the scope of their official limits and cannot be termed to be the part of their duty. In other words, the material before the court prima-facie shows the commission of cognizable offences by accused persons being the public servants under the provisions of the Indian Penal Code and PC Act as reflected in the opening sentence of this order.*

14. Having regard to the above and while relying on the following authorities of the Hon'ble Apex Court in the cases of A.R.Anthule Vs. R.S. Nayak- (1984) 4 SCC 500, Raghunath Ananth Goviklar Vs. State of Maharashtra- 2008 11 SCC 289 and Bakshish Singh Brar Vs. Gurmej Kaur- 1987 (4) SCC 663, I am of the opinion that, prior sanction as contemplated either under Section 19 of the PC Act or under Section 197 of Cr.P.C. is not required for taking cognizance of alleged offences and proceed against accused persons. Accordingly. I pass the following:

: ORDER:

Cognizance of offences punishable under Sections 167, 219, 384, 448, 465, 466, 468, 469, 471, 506, 511, 120B read with Section 34 of the Indian Penal Code and under Section 13 of the Prevention of Corruption Act is taken against accused No.1 to 7.

Office is directed to register the case in Register No.III and then put up for furnishing the list of witnesses and issuance of process to accused No.1 to 7 by 4.6.2024."

(Emphasis added)

The learned Special Judge relies on the judgment of the Apex Court in the cases of ***A.R.ANTULAY v. R.S.NAYAK*** and ***RAGHUNATH ANANT GOVILKAR v. STATE OF MAHARASHTRA*** and holds that prior sanction as contemplated under Section 19 of the Act or under Section 197 of the Cr.P.C., is not required for taking cognizance for the offences alleged and accordingly takes cognizance for the afore-

quoted offences. The offences are an amalgam of both the Act and the Cr.P.C.

11. The solitary issue projected by the learned senior counsel for the petitioners is that without sanction under Section 19 of the Act or under Section 197 of the Cr.P.C., the Court could not have taken cognizance. It now becomes germane to notice both Section 19 of the Act and Section 197 of the Cr.P.C. They read as follows:

Section 19 of the Prevention of Corruption Act:

> ***"19. Previous sanction necessary for prosecution.— (1) No court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15 alleged to have been committed by a public servant, 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 and is not removable from his office save by or with the sanction of the Central Government, of that 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 and is not removable from his office save by or with the sanction of the State Government, of that Government;***
>
> ***(c) in the case of any other person, of the authority competent to remove him from his office.***
>
> *Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent*

authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under Section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.—For the purposes of sub-section (1), the expression "public servant" includes such person—

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

(Emphasis supplied)

Section 197 of the Cr.P.C.:

"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.

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 166-A, Section 166-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 370, Section 375, Section 376, Section 376-A, Section 376-AB, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB] or Section 509 of the Indian Penal Code (45 of 1860).

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

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the

maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3-A) 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 Constitu-tion was in force therein, except with the previous sanction of the Central Government.

(3-B) 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."

(Emphasis supplied)

Section 19 of the Act *supra* mandates that no Court can take cognizance of the offence without a sanction for such prosecution

against the public servant being placed before it. Therefore it is mandatory. Section 197 of the Cr.P.C., again mandates cognizance by any Court concerned to be taken only after previous sanction from the hands of the Competent Authority. Therefore, either under Section 19 of the Act or under Section 197 of the Cr.P.C., sanction to prosecute a public servant is imperative.

12. The offence that the learned Special Judge has taken cognizance of, as noticed *supra*, is Section 13 under the Act. Section 13 of the Act reads as follows:

> *"**13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct,—***
>
> ***(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or***
>
> ***(b) if he intentionally enriches himself illicitly during the period of his office.***
>
> ***Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.***
>
> ***Explanation 2.—The expression "known sources of income" means income received from any lawful sources.***

> *(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine."*
>
> *(Emphasis supplied)*

Section 13 deals with criminal misconduct by a public servant and it has certain ingredients. This Court is not, at this juncture, entering into whether the facts would meet the ingredients of Section 13 or not, since that is not the submission made nor whether other IPC provisions would get attracted. The action is solely for want of sanction.

13. As observed hereinabove, pursuant to registration of crime in Crime No.55 of 2021 search is conducted at several places including the office and residence of the respondent. If this were to be done without registration of crime in Crime No.55 of 2021, it would have been an action which is not in the discharge of official duty. The petitioners were officers of the ACB at the relevant point in time. They have searched the premises of the respondent by taking a search warrant from the hands of the concerned Court. Search was in pursuance of registration of crime, more so in the

light of the fact that the crime was registered against unknown persons. The content of the crime was found in the complaint but not pointed against any particular individual. Therefore, in the considered view of this Court, it is in the discharge of official duties and not *de hors* of official duties. There is clear nexus between the acts alleged against the petitioners by the respondent and the position they held and the duty they performed. The merit of the matter is not what is submitted by either of the parties. It is only concerning sanction. If it is in the discharge of official duty and has nexus to such discharge, sanction for such prosecution under Section 197 of the Cr.P.C. for offences other than under the Act is imperative, while it is mandatory for any offence under the Act. Therefore, sanction was required both under Section 19 of the Act or under Section 197 of the Cr.P.C.

14. Now it becomes germane to notice the line of law as laid down by the Apex Court right from 1955 interpreting Section 197 of the Cr.P.C. with regard to sanction being imperative to prosecute public servants; sanction only at the time when the concerned

Court takes cognizance of the offence. The Apex Court in the case of ***AMRIK SINGH v. STATE OF PEPSU***[1] has held as follows:

> ***"7. The result of the authorities may thus be summed up: It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code of Criminal Procedure; 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; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution.***
>
> ***8.*** *It is conceded for the respondent that on the principle above enunciated, sanction would be required for prosecuting the appellant under Section 465, as the charge was in respect of his duty of obtaining signatures or thumb impressions of the employees before wages were paid to them. But he contends that misappropriation of funds could, under no circumstances, be said to be within the scope of the duties of a public servant, that he could not, when charged with it, claim justification for it by virtue of his office, that therefore no sanction under Section 197(1) was necessary, and that the question was concluded by the decisions in Hori Ram Singh v. Emperor [AIR 1939 FC 43 : 1939 FCR 159] and Albert West Meads v. King [AIR 1948 PC 156 : 75 IA 185] , in both of which the charges were of criminal misappropriation. We are of opinion that this is too broad a statement of the legal position, and that the two decisions cited lend no support to it. In our judgment, even when the charge is one of misappropriation by a public servant, whether sanction is required under Section 197(1) will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from*

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[1] ***(1955)1 SCR 1302***

them, then sanction under Section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required."

(Emphasis supplied)

Later, the Apex Court in the case of ***PUKHRAJ v. STATE OF RAJASTHAN***[2] has held as follows:

> ***"2. The law regarding the circumstances under which sanction under Section 197 of the Code of Criminal Procedure is necessary is by now well settled as a result of the decisions from Hori Ram Singh's case [AIR 1939 FC 43: 1939 FCR 159: 40 Cri LJ 468] to the latest decision of this Court in Bhagwan Prasad Srivastava v. N.P. Misra [(1970) 2 SCC 56: (1971) 1 SCR 317]. While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. 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***

[2] ***(1973) 2 SCC 701***

mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. *It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "cloak of office" and "professed exercise of the office" may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty. In Hori Ram Singh case Sulaiman, J. observed:*

> *"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."*

In the same case Varadachariar, J. observed: "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 ofthe Privy Council observed in Gill [AIR 1948 PC 128 : 1948 LR 75 IA 41 : 49 Cri LJ 503] case:

> *"A public servant can only be said to act or 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 in virtue of his office."*

In Matajog Dobey v. H.C. Bhari [AIR 1955 SC 44: (1955) 2 SCR 925: 1956 Cri LJ 140] the Court was of the view that the test laid down that it must be established that the act complained of was an official act unduly narrowed down the scope of the

protection afforded by Section 197. After referring to the earlier cases the Court summed up the results as follows:

> *"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, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."*

Applying this test it is difficult to say that the acts complained of i.e. of kicking the complainant and of abusing him, could be said to have been done in the course of performance of the 2nd respondent's duty. At this stage all that we are concerned with is whether on the facts alleged in the complaint it could be said that what the 2nd respondent is alleged to have done could be said to be in purported exercise of his duty. Very clearly it is not. We must make it clear, however, that we express no opinion as to the truth or falsity of the allegations."

(Emphasis supplied)

Elaborating the said consideration, the Apex Court in the case of ***SANKARAN MOITRA v. SADHNA DAS***[3] has raised the following issue:

> *"**6.** The High Court by order dated 11-7-2003 dismissed the application. It overruled the contention of the accused based on Section 197 of the Code of Criminal Procedure thus:*
>
> > *"In its considered view Section 197 Cr.P.C., has got no manner of application in the present case. Under Section 197 Cr.P.C., sanction is required only if the public servant was, at the time of commission of offence, 'employed in connection with the affairs of the Union or of a State' and he was 'not removable from his office save by or with the sanction of the Government'. The bar under Section 197 Cr.P.C., cannot be raised by a public*

[3] ***(2006) 4 SCC 584***

servant if he is removable by some authority without the sanction of the Government.

Committing an offence can never be a part of an official duty. Where there is no necessary connection between the act and the performance of the duties of a public servant, Section 197 Cr.P.C., will not be attracted. Beating a person to death by a police officer cannot be regarded as having been committed by a public servant within the scope of his official duties."

Finding on the said issue by the Apex Court is as follows:

*"**25.** The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. **If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system.** So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of*

sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of learned counsel for the complainant that this is an eminently fit case for grant of such sanction.

26. We thus allow this appeal and setting aside the order of the High Court quash the complaint only on the ground of want of sanction under Section 197(1) of the Code of Criminal Procedure. The observations herein, however, shall not prejudice the rights of the complainant in any prosecution after the requirements of Section 197(1) of the Code of Criminal Procedure are complied with."

(Emphasis supplied)

The Power of High Court which was questioned before the Apex Court was set aside on the sole ground that there was no sanction under Section 197 of the Cr.P.C. to prosecute the petitioners. Again, the Apex Court in the case of ***DEVINDER SINGH v. STATE OF PUNJAB***[4]***,*** has held as follows:

*"**39.** The principles emerging from the aforesaid decisions are summarised hereunder:*

***39.1.** Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.*

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section

[4]***(2016) 12 SCC 87***

197 Cr.P.C., has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 Cr.P.C.,. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 Cr.P.C.,, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 Cr.P.C., would apply.

39.5. *In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.*

39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of court at a later stage, finding to that effect is permissible and such a plea can be taken first time before the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed.

39.7. *Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.*

> ***39.8.*** *Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. 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 material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.*
>
> ***39.9.*** *In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial."*
>
> *(Emphasis supplied)*

Following these judgments, the Apex Court in the case of ***D.DEVARAJA v. OWAIS SABEER HUSSAIN***[5] has held as follows:

> *"**30.** The object of sanction for prosecution, whether under Section 197 of the Code of Criminal Procedure, or under Section 170 of the Karnataka Police Act, is to protect a public servant/police officer discharging official duties and functions from harassment by initiation of frivolous retaliatory criminal proceedings. As held by a Constitution Bench of this Court in **Matajog Dobey v. H.C. Bhari [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140] : (AIR p. 48, para 15)***
>
> > *"15. … 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. …*
>
> *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*

[5] ***(2020)7 SCC 695***

servant in the discharge of his official duties. No one can take such proceedings without such sanction."

31.** In **Pukhraj v. State of Rajasthan [Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944] this Court held: (SCC p. 703, para 2)

> *"2. … While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. 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 need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "cloak of office" and "professed exercise of the office" may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty."*

32. *In* ***Amrik Singh v. State of PEPSU [Amrik Singh v. State of PEPSU, AIR 1955 SC 309 :*** *1955 Cri LJ 865] this Court referred to the judgments of the Federal Court in Hori Ram Singh v. Crown [Hori Ram Singh v. Crown, 1939 SCC OnLine FC 2: AIR 1939 FC 43]; H.H.B. Gill v. King Emperor [H.H.B. Gill v. King Emperor, 1946 SCC OnLine FC 10: AIR 1947 FC 9] and the judgment of the Privy Council in Gill v. R. [Gill v. R., 1948 SCC OnLine PC 10: (1947-48) 75 IA 41: AIR 1948 PC 128] and held: (Amrik Singh case [Amrik Singh v. State of PEPSU, AIR 1955 SC 309: 1955 Cri LJ 865] , AIR p. 312, para 8)*

> *"8. The result of the authorities may thus be summed up : It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code of Criminal Procedure; 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; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution."*

33. *Section 197 of the Code of Criminal Procedure, 1898, hereinafter referred to as the old Criminal Procedure Code, which fell for consideration in Matajog Dobey [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44: 1956 Cri LJ 140], Pukhraj [Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944] and Amrik Singh [Amrik Singh v. State of PEPSU, AIR 1955 SC 309: 1955 Cri LJ 865] is in pari materia with Section 197 of the Code of Criminal Procedure, 1973. The Code of Criminal Procedure, 1973 has repealed and replaced the old Code of Criminal Procedure.*

34. *In Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104] this Court held : (SCC pp. 46-47, para 7)*

"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."

(emphasis supplied)

35. *In State of Orissa v. Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40: 2004 SCC (Cri) 2104] this Court interpreted the use of the expression*

"official duty" to imply 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. Section 197 of the Code of Criminal Procedure does not extend its protective cover to every act or omission done by a public servant while in service. The scope of operation of the section is restricted to only those acts or omissions which are done by a public servant in discharge of official duty.

36. *In Shreekantiah Ramayya Munipalli v. State of Bombay [Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287 : 1955 Cri LJ 857] this Court explained the scope and object of Section 197 of the old Criminal Procedure Code, which as stated hereinabove, is in pari materia with Section 197 of the Code of Criminal Procedure. This Court held: (AIR pp. 292-93, paras 18-19)*

> *"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—*
>
> *'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 Accused 2 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 Accused 2 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."

37. *The scope of Section 197 of the old Code of Criminal Procedure, was also considered in P. Arulswami v. State of Madras [P. Arulswami v. State of Madras, AIR 1967 SC 776 : 1967 Cri LJ 665] where this Court held : (AIR p. 778, para 6)*

"6. … 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."

"If the act is totally 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…."

38. *In B. Saha v. M.S. Kochar [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] this Court held : (SCC p. 185, para 18)*

"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."

39. *In Virupaxappa Veerappa Kadampur v. State of Mysore [Virupaxappa Veerappa Kadampur v. State of Mysore, AIR 1963 SC 849 : (1963) 1 Cri LJ 814] cited by Mr Poovayya, a three-Judge Bench of this Court had, in the context of Section 161 of the Bombay Police Act, 1951, which is similar to Section 170 of the Karnataka Police Act, interpreted the phrase "under colour of duty" to mean "acts done under the cloak of duty, even though not by virtue of the duty".*

40. *In Virupaxappa Veerappa Kadampur [Virupaxappa Veerappa Kadampur v. State of Mysore, AIR 1963 SC 849 : (1963) 1 Cri LJ 814] this Court referred (at AIR p. 851, para 9) to the meaning of the words "colour of office" in Wharton's Law Lexicon, 14th Edn., which is as follows:*

"Colour of office, when an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour."

41. This Court also referred (at AIR p. 852, para 9) to the meaning of "colour of office" in Stroud's Judicial Dictionary, 3rd Edn., set out hereinbelow:

"Colour:"Colour of office" is always taken in the worst part, and signifies an act evil done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office, is but a veil to the falsehood, and the thing is grounded upon vice, and the office is as a shadow to it. But "by reason of the office" and "by virtue of the office" are taken always in the best part."

42. *After referring to the Law Lexicons referred to above, this Court held : (Virupaxappa Veerappa Kadampur case [Virupaxappa Veerappa Kadampur v. State of Mysore, AIR 1963 SC 849 : (1963) 1 Cri LJ 814] , AIR p. 852, para 10)*

"10. It appears to us that the words "under colour of duty" have been used in Section 161(1) to include acts

done under the cloak of duty, even though not by virtue of the duty. When he (the police officer) prepares a false panchnama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in Stroud's Dictionary "as a veil to his falsehood". The acts thus done in dereliction of his duty must be held to have been done "under colour of the duty"."

43. *In Om Prakash v. State of Jharkhand [Om Prakash v. State of Jharkhand, (2012) 12 SCC 72 : (2013) 3 SCC (Cri) 472] this Court, after referring to various decisions, pertaining to the police excess, explained the scope of protection under Section 197 of the Code of Criminal Procedure as follows : (SCC p. 89, para 32)*

"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 [K. Satwant Singh v. State of Punjab, AIR 1960 SC 266 : 1960 Cri LJ 410]). 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 [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104]). 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)

44. In Sankaran Moitra v. Sadhna Das [Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584*: (2006) 2 SCC (Cri) 358] the majority referred to Gill v. R. [Gill v. R., 1948 SCC OnLine PC 10: (1947-48) 75 IA 41: AIR 1948 PC 128], H.H.B. Gill v. King Emperor [H.H.B. Gill v. King Emperor, 1946 SCC OnLine FC 10: AIR 1947 FC 9]; Shreekantiah Ramayya Munipalli v. State of Bombay [Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287: 1955 Cri LJ 857]; Amrik Singh v. State of PEPSU [Amrik Singh v. State of PEPSU, AIR 1955 SC 309: 1955 Cri LJ 865] ; Matajog Dobey v. H.C. Bhari [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140]; Pukhraj v. State of Rajasthan [Pukhraj v. State of Rajasthan, (1973) 2 SCC 701: 1973 SCC (Cri) 944]; B. Saha v. M.S. Kochar [B. Saha v. M.S. Kochar, (1979) 4 SCC 177: 1979 SCC (Cri) 939]; Bakhshish Singh Brar v. Gurmej Kaur [Bakhshish Singh Brar v. Gurmej Kaur, (1987) 4 SCC 663 : 1988 SCC (Cri) 29]; Rizwan Ahmed Javed Shaikh v. Jammal Patel [Rizwan Ahmed Javed Shaikh v. Jammal Patel, (2001) 5 SCC 7] and held: (Sankaran Moitra case [Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584: (2006) 2 SCC (Cri) 358] , SCC pp. 602-603, para 25)*

> *"25. The High Court has stated [Sankaran Moitra v. Sadhana Das, 2003 SCC OnLine Cal 309 : (2003) 4 CHN 82] that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within*

its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of the learned counsel for the complainant that this is an eminently fit case for grant of such sanction."

45. *The dissenting view of C.K. Thakker, J. in Sankaran Moitra [Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584 : (2006) 2 SCC (Cri) 358] supports the contention of Mr Luthra to some extent. However, we are bound by the majority view. Furthermore even the dissenting view of C.K. Thakker, J. was in the context of an extreme case of causing death by assaulting the complainant.*

46. *In K.K. Patel v. State of Gujarat [K.K. Patel v. State of Gujarat, (2000) 6 SCC 195 : 2001 SCC (Cri) 200] this Court referred to Virupaxappa Veerappa Kadampur [Virupaxappa Veerappa Kadampur v. State of Mysore, AIR 1963 SC 849 : (1963) 1 Cri LJ 814] and held : (K.K. Patel case [K.K. Patel v. State of Gujarat, (2000) 6 SCC 195 : 2001 SCC (Cri) 200] , SCC p. 203, para 17)*

"17. The indispensable ingredient of the said offence is that the offender should have done the act "being a public servant". The next ingredient close to its heels is that such public servant has acted in disobedience of any legal direction concerning the way in which he should have conducted as such public servant. For the offences under Sections 167 and 219 IPC the pivotal ingredient is the same as for the offence under Section 166 IPC. The remaining offences alleged in the

complaint, in the light of the averments made therein, are ancillary offences to the above and all the offences are parts of the same transaction. They could not have been committed without there being at least the colour of the office or authority which the appellants held."

… … .. ..

55. Devinder Singh v. State of Punjab [Devinder Singh v. State of Punjab, (2016) 12 SCC 87*: (2016) 4 SCC (Cri) 15: (2017) 1 SCC (L&S) 346] cited by Mr Luthra is clearly distinguishable as that was a case of killing by the police in fake encounter. Satyavir Singh Rathi v. State [Satyavir Singh Rathi v. State, (2011) 6 SCC 1: (2011) 2 SCC (Cri) 782] also pertains to a fake encounter, where the deceased was mistakenly identified as a hardcore criminal and shot down without provocation. The version of the police that the police had been attacked first and had retaliated, was found to be false. In the light of these facts, that this Court held that it could not, by any stretch of imagination, be claimed by anybody that a case of murder could be within the expression "colour of duty". This Court dismissed the appeals of the policemen concerned against conviction, inter alia, under Section 302 of the Penal Code, which had duly been confirmed [Satyavir Singh Rathi v. State, 2009 SCC OnLine Del 2973] by the High Court. The judgment is clearly distinguishable.*

…. …. ….

61. In Om Prakash v. State of Jharkhand [Om Prakash v. State of Jharkhand, (2012) 12 SCC 72 : (2013) 3 SCC (Cri) 472] this Court held : (SCC pp. 90-91 & 95, paras 34 & 42-43)

"34. In Matajog Dobey [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140] the Constitution Bench of this Court was considering what is the scope and meaning of a somewhat similar expression 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' occurring in Section 197 of the Criminal Procedure Code (5 of 1898). The Constitution Bench observed that 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. On the question as to which act falls within

the ambit of abovequoted expression, the Constitution Bench concluded that 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, but not a pretended or fanciful claim that he did it in the course of performance of his duty. While dealing with the question whether the need for sanction has to be considered as soon as the complaint is lodged and on the allegations contained therein, the Constitution Bench referred to Hori Ram Singh [Hori Ram Singh v. Crown, 1939 SCC OnLine FC 2 : AIR 1939 FC 43] and observed that at first sight, it seems as though there is some support for this view in Hori Ram Singh [Hori Ram Singh v. Crown, 1939 SCC OnLine FC 2 : AIR 1939 FC 43] because Sulaiman, J. has observed in the said judgment that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution and Varadachariar, J. has also stated that : (Matajog Dobey case [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140] , AIR p. 49, para 20)

'20. … the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceedings.'

***

The legal position is thus settled by the Constitution Bench in the above paragraph. Whether sanction is necessary or not may have to be determined from stage to stage. If, at the outset, the defence establishes that the act purported to be done is in execution of official duty, the complaint will have to be dismissed on that ground.

***

42. It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial. This Court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognised as legal by our criminal justice administration system. They amount to State-sponsored terrorism. But, one cannot be oblivious of the fact that there are cases where the

police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact. In such circumstances, while the police have to do their legal duty of arresting the criminals, they have also to protect themselves. The requirement of sanction to prosecute affords protection to the policemen, who are sometimes required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. Sanction must be a precondition to their prosecution. It affords necessary protection to such police personnel. The plea regarding sanction can be raised at the inception.

43. In our considered opinion, in view of the facts which we have discussed hereinabove, no inference can be drawn in this case that the police action is indefensible or vindictive or that the police were not acting in discharge of their official duty. In Zandu Pharmaceutical Works Ltd. [Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122 : 2005 SCC (Cri) 283] this Court has held that the power under Section 482 of the Code should be used sparingly and with circumspection to prevent abuse of process of court but not to stifle legitimate prosecution. There can be no two opinions on this, but, if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of court, the power under Section 482 of the Code must be exercised and proceedings must be quashed. Indeed, the instant case is one of such cases where the proceedings initiated against the police personnel need to be quashed."

… … …

65. The law relating to the requirement of sanction to entertain and/or take cognizance of an offence, allegedly committed by a police officer under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, is well settled by this Court, inter alia by its decisions referred to above.

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.

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."

(Emphasis supplied)

15. The Apex Court, after the afore-quoted judgments, has laid down a nexus test to determine whether sanction under Section 197 of the Cr.P.C., would be required, even in cases where the alleged acts attract any performance in the discharge of official duties of the public servant. The Apex Court in the case of ***A. SRINIVASULU v. STATE REP. BY THE INSPECTOR OF POLICE[6],*** while framing an issue with regard to sanction under Section 197 Cr.P.C., has held as follows:

"…. …. ….

29. There is no dispute about the fact that A-1 to A-4, being officers of a company coming within the

[6] *2023 SCC OnLine SC 900*

description contained in the Twelfth item of Section 21 of the IPC, were 'public servants' within the definition of the said expression under Section 21 of the IPC. A-1 to A-4 were also public servants within the meaning of the expression under Section 2(c)(iii) of the PC Act. Therefore, there is a requirement of previous sanction both under Section 197(1) of the Code and under Section 19(1) of the PC Act, for prosecuting A-1 to A-4 for the offences punishable under the IPC and the PC Act.

30. *Until the amendment to the PC Act under the Prevention of Corruption (Amendment) Act, 2018 (Act 16 of 2018), with effect from 26.07.2018, the requirement of a previous sanction under Section 19(1)(a) was confined only to a person "**who is employed**". On the contrary, Section 197(1) made the requirement of previous sanction necessary, both in respect of "any person who is" and in respect of "any person who was" employed. By the amendment under Act 16 of 2018, Section 19(1)(a) of the PC Act was suitably amended so that previous sanction became necessary even in respect of a person who "was employed at the time of commission of the offence".*

31. *The case on hand arose before the coming into force of the Prevention of Corruption (Amendment) Act, 2018 (Act 16 of 2018). Therefore, no previous sanction under Section 19(1) of the PC Act was necessary insofar as A-1 was concerned, as he had retired by the time a final report was filed. He actually retired on 31.08.1997, after 7 months of registration of the FIR (31.01.1997) and 5 years before the filing of the final report (16.07.2002) and 6 years before the Special Court took cognizance (04.07.2003). But previous sanction under Section 19(1) of the PC Act was required in respect of A-3 and A-4, as they were in service at the time of the Special Court taking cognizance. Therefore, the Agency sought sanction, but the Management of BHEL refused to grant sanction not once but twice, insofar as A-3 and A-4 are concerned.*

32. *It is by a quirk of fate or the unfortunate circumstances of having been born at a time (and consequently retiring at a particular time) that the benevolence derived by A-3 and A-4 from their employer, was not available to A-1. Had he continued in service, he could not have been prosecuted for the*

offences punishable under the PC Act, in view of the stand taken by BHEL.

33. *It appears that BHEL refused to accord sanction by a letter dated 24.11.2000, providing reasons, but the CVC insisted, vide a letter dated 08.02.2001. In response to the same, a fresh look was taken by the CMD of BHEL. Thereafter, by a decision dated 02.05.2001, he refused to accord sanction on the ground that it will not be in the commercial interest of the Company nor in the public interest of an efficient, quick and disciplined working in PSU.*

34. *The argument revolving around the necessity for previous sanction under Section 197(1) of the Code, has to be considered keeping in view the above facts. It is true that the refusal to grant sanction for prosecution under the PC Act in respect of A-3 and A-4 may not have a direct bearing upon the prosecution of A-1. But it would certainly provide the context in which the culpability of A-1 for the offences both under the IPC and under the PC Act has to be determined.*

35. *It is admitted by the respondent-State that no previous sanction under section 197(1) of the Code was sought for prosecuting A-1. The stand of the prosecution is that the previous sanction under Section 197(1) may be necessary only when the offence is allegedly committed "**while acting or purporting to act in the discharge of his official duty**". Almost all judicial precedents on Section 197(1) have turned on these words. Therefore, we may now take a quick but brief look at some of the decisions.*

36. *Dr. Hori Ram Singh v. The Crown*[3] *is a decision of the Federal Court, cited with approval by this court in several decisions. It arose out of the decision of the Lahore High Court against the decision of the Sessions Court which acquitted the appellant of the charges under Sections 409 and 477A IPC for want of consent of the Governor. Sir S. Varadachariar, with whose opinion Gwyer C.J., concurred, examined the words, "any act done or purporting to be done in the execution of his duty" appearing in Section 270(1) of the Government of India Act, 1935, which required the consent of the Governor.* ***The Federal Court observed at the outset that this question is substantially one of fact, to be determined with reference to the act complained of and the attendant***

circumstances*. The Federal Court then referred by way of analogy to a number of rulings under Section 197 of the Code and held as follows:—*

> *"The reported decisions on the application of sec. 197 of the Criminal Procedure Code are not by any means uniform. In most of them, the actual conclusion will probably be found to be unexceptionable, in view of the facts of each ease; but, in some, the test has been laid down in terms which it is difficult to accept as exhaustive or correct. Much the same may be said even of decisions pronounced in England, on the language, of similar statutory provisions (see observations in Booth v. Clive.* ***It does not seem to me necessary to review in detail the decisions given under sec. 197 of the Criminal Procedure Code which may roughly be classified as falling into three groups, so far as they attempted to state something in the nature of a test. In one group of cases, it is insisted that there must be something in the nature of the act complained of that attaches it to the official character of the person doing it : cf.*** *In re Sheik Abdul Khadir Saheb; Kamisetty Raja Rao v. Ramaswamy, Amanat Ali v. King-emperor, King-Emperor v. Maung Bo Maung and Gurushidayya Shantivirayya Kulkarni v. King-Emperor.* ***In another group, more stress has been laid on the circumstance that the official character or status of the accused gave him the opportunity to commit the offence. It seems to me that the first is the correct view. In the third group of cases, stress is laid almost exclusively on the fact that it was at a time when the accused was engaged in his official duty that the alleged offence was said to have been committed [see*** *Gangaraju v. Venki,* ***quoting from Mitra's Commentary on the (criminal Procedure Code). The use of the expression "while acting" etc., in sec. 197 of the Criminal Procedure Code (particularly its introduction by way of amendment in 1923) has been held to lend some support to this view. While I do not wish to ignore the significance of the time factor, it does not seem to me right to make it the test. To take an illustration suggested in the course of the argument, if a medical officer, while on duty in the hospital, is alleged to have committed rape on one of the patients or to have stolen a jewel from the patient's person, it is difficult to believe that it was***

the intention of the Legislature that he could not be prosecuted for such offences except with the previous sanction of the Local Government"

37. *It is seen from the portion of the decision extracted above that the Federal Court categorised in Dr. Hori Ram Singh (supra), the decisions given under Section 197 of the Code into three groups namely* ***(i) cases where it was held that there must be something in the nature of the act complained of that attaches it to the official character of the person doing it; (ii) cases where more stress has been laid on the circumstance that the official character or status of the accused gave him the opportunity to commit the offence;*** *and* ***(iii) cases where stress is laid almost exclusively on the fact that it was at a time when the accused was engaged in his official duty that the alleged offence was said to have been committed.*** *While preferring the test laid down in the first category of cases, the Federal Court rejected the test given in the third category of cases by providing the illustration of a medical officer committing rape on one of his patients or committing theft of a jewel from the patient's person.*

38. *In Matajog Dobey v. H.C. Bhari*[4] *a Constitution Bench of this Court was concerned with the interpretation to be given to the words, "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" in Section 197 of the Code. After referring to the decision in Dr. Hori Ram Singh, the Constitution Bench summed up the result of the discussion, in paragraph 19 by holding :* ***"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, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."***

39. *In State of Orissa through Kumar Raghvendra Singh v. Ganesh Chandra Jew*[5]*, a two Member Bench of this Court explained that the protection under Section 197 has certain limits and that it is available only when the alleged act is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. The Court also explained that 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.

40. *The above decision in State of Orissa (supra) was followed (incidentally by the very same author) in K. Kalimuthu v. State by DSP[6] and Rakesh Kumar Mishra v. State of Bihar[7].*

41. *In Devinder Singh v. State of Punjab through CBI[8], this Court took note of almost all the decisions on the point and summarized the principles emerging therefrom, in paragraph 39 as follows:*

> *"**39.** The principles emerging from the aforesaid decisions are summarised hereunder:*
>
> ***39.1.*** *Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.*
>
> ***39.2.*** ***Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.***
>
> ***39.3.*** ***Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.***
>
> ***39.4.*** ***In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty***

> ***to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.***
>
> ***....***"

42. *In D. Devaraja v. Owais Sabeer Hussain[9], this Court explained that sanction is required not only for acts done in the discharge of official duty but also required for any act purported to be done in the discharge of official duty and/or act done under colour of or in excess of such duty or authority. This Court also held that 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.*

43. *Keeping in mind the above principles, if we get back to the facts of the case, it may be seen that the primary charge against A-1 is that with a view to confer an unfair and undue advantage upon A-5, he directed PW-16 to go for limited tenders by dictating the names of four bogus companies, along with the name of the chosen one and eventually awarded the contract to the chosen one. It was admitted by the prosecution that at the relevant point of time, the Works Policy of BHEL marked as Exhibit P-11, provided for three types of tenders, namely* ***(i)*** *Open Tender;* ***(ii)*** *Limited/Restricted Tender; and* ***(iii)*** *Single Tender.*

44. *Paragraph 4.2.1 of the Works Policy filed as Exhibit P-11 and relied upon by the prosecution laid down that as a rule, only works up to Rs. 1,00,000/- should be awarded by Restricted Tender. However, paragraph 4.2.1 also contained a rider which reads as follows:*

> *"4.2.1 … However even in cases involving more than Rs. 1,00,000/- if it is felt necessary to resort to Restricted Tender due to urgency or any other reasons it would be open to the General Managers or other officers authorised for this purpose to do so after recording reasons therefor."*

45. *Two things are clear from the portion of the Works Policy extracted above. One is that a deviation from the rule was permissible. The second is that even General Managers*

were authorised to take a call, to deviate from the normal rule and resort to Restricted Tender.

46. *Admittedly, A-1 was occupying the position of Executive Director, which was above the rank of a General Manager. According to him he had taken a call to go for Restricted Tender, after discussing with the Chairman and Managing Director. The Chairman and Managing Director, in his evidence as PW-28, denied having had any discussion in this regard.*

47. *For the purpose of finding out whether A-1 acted or purported to act in the discharge of his official duty, it is enough for us to see whether he could take cover, rightly or wrongly, under any existing policy. Paragraph 4.2.1 of the existing policy extracted above shows that A-1 at least had an arguable case, in defence of the decision he took to go in for Restricted Tender. Once this is clear, his act, even if alleged to be lacking in bona fides or in pursuance of a conspiracy, would be an act in the discharge of his official duty, making the case come within the parameters of Section 197(1) of the Code. Therefore, the prosecution ought to have obtained previous sanction. The Special Court as well as the High Court did not apply their mind to this aspect.*

48. *Shri Padmesh Mishra, learned counsel for the respondent placed strong reliance upon the observation contained in paragraph 50 of the decision of this Court in Parkash Singh Badal v. State of Punjab[10]. It reads as follows:—*

> ***"50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence."***

49. *On the basis of the above observation, it was contended by the learned counsel for the respondent that any act done by a public servant, which constitutes an offence of*

cheating, cannot be taken to have been committed while acting or purporting to act in the discharge of official duty.

50. *But the above contention in our opinion is far-fetched. The observations contained in paragraph 50 of the decision in Parkash Singh Badal (supra) are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 120B cannot be regarded as having been committed by a public servant while acting or purporting to act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 of the Code does not carve out any group of offences that will fall outside its purview. Therefore, the observations contained in para 50 of the decision in Parkash Singh Badal cannot be taken as carving out an exception judicially, to a statutory prescription. In fact,* ***Parkash Singh Badal*** *cites with approval the other decisions (authored by the very same learned Judge) where this Court made a distinction between an act, though in excess of the duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. Interestingly, the proposition laid down in Rakesh Kumar Mishra (supra) was distinguished in paragraph 49 of the decision in Parkash Singh Badal, before the Court made the observations in paragraph 50 extracted above.*

51. *No public servant is appointed with a mandate or authority to commit an offence. Therefore, if the observations contained in paragraph 50 of the decision in Parkash Singh Badal are applied, any act which constitutes an offence under any statute will go out of the purview of an act in the discharge of official duty. The requirement of a previous sanction will thus be rendered redundant by such an interpretation.*

52. *It must be remembered that in this particular case, the FIR actually implicated only four persons, namely PW-16, A-3, A-4 an A-5. A-1 was not implicated in the FIR. It was only after a confession statement was made by PW-16 in the year 1998 that A-1 was roped in. The allegations against A-1 were that he got into a criminal conspiracy with the others to commit these offences. But the Management of BHEL refused to grant sanction for prosecuting A-3 and A-4, twice, on the ground that*

> *the decisions taken were in the realm of commercial wisdom of the Company.* ***If according to the Management of the Company, the very same act of the co-conspirators fell in the realm of commercial wisdom, it is inconceivable that the act of A-1, as part of the criminal conspiracy, fell outside the discharge of his public duty, so as to disentitle him for protection under Section 197(1) of the Code****.*
>
> ***53.*** *In view of the above, we uphold the contention advanced on behalf of A-1 that the prosecution ought to have taken previous sanction in terms of Section 197(1) of the Code, for prosecuting A-1, for the offences under the IPC."*
>
> *(Emphasis supplied)*

The Apex Court holds that even for acts performed beyond the discharge of official duties, previous sanction under Section 197 of the Cr.P.C. is imperative, even if the offences are punishable for cheating and forgery.

16. On a coalesce of the judgments rendered by the Apex Court quoted *supra* what would unmistakably emerge is, if there is no nexus with the acts alleged to the discharge of official duties sanction would not be required, but if it is in the discharge of official duties sanction would be imperative. In the light of the preceding analysis, it cannot but be said that the acts of these petitioners were in the discharge of their official duties. Therefore, sanction

under Section 197 of the Cr.P.C., was undoubtedly imperative and for taking of cognizance Section 13 of the Act it is needless to observe, Section 19 of the Act is imperative to be followed. The concerned Court has misdirected itself in law in holding that sanction both, under Section 19 of the Act or under Section 197 of the Cr.P.C., is not required. It has blissfully glossed over both the provisions of law. It is not that the respondent is not aware of the position of the law. Being aware, he has communicated not once but twice, seeking according of sanction to prosecute these petitioners. One of such communication is also placed on record by the respondent; it is dated 06-12-2023. The submission is that no sanction is accorded even as on date.

17. Section 19 of the Act supra indicates that the appropriate Government shall after receipt of communication seeking sanction dispose of the said application within an outer limit of four months. Since sanction is pending consideration at the hands of the Competent Authority and sanction being necessary to take cognizance of the offence, the Court ought not to have taken cognizance of the offence against these petitioners, it has done in

gross violation of law and misapplication of the judgments it so refers in the course of the order taking cognizance. As observed hereinabove, the only submission made by the learned senior counsel for the petitioners is, *qua* the order of taking of cognizance. The solitary ground urged is, the order being bad for want of sanction. Therefore, the order of taking of cognizance does get obliterated, but not the complaint. The contention of the learned senior counsel that if sanction is in place, further proceedings can go on, if there is no sanction, there can be no proceeding, merits complete acceptance. In the light of the preceding analysis, the order of taking of cognizance is rendered unsustainable and the unsustainability leads to its obliteration.

18. For the aforesaid reasons, the following:

O R D E R

(i) Criminal petition is allowed.

(ii) The order of taking of cognizance dated 30-05-2024 stands obliterated, in the light of the observations made in the course of the order.

Consequently, I.A.No.1 of 2024 also stands disposed.

Sd/-
JUDGE

bkp
CT:MJ