Reserved on : 25.07.2024
Pronounced on : 06.08.2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.28964 OF 2023 (GM – RES)

BETWEEN:

SRI ALOK KUMAR
S/O LATE MURALIDHAR THAKUR
AGED ABOUT 54 YEARS
W/A ADGP (TRAINING)
CARLTON HOUSE, PALACE ROAD
BENGALURU – 560 001.

... PETITIONER

(BY SRI PRABHULING K.NAVADGI, SR.ADVOCATE A/W
SRI SWAROOP S., ADVOCATE)

AND:

SMT. MAMATHA SINGH
D/O K. SHANTHAVEERAPPA
RESIDING AT D1, 161, DLF
WESTEND HEIGHTS
AKSHAYA NAGAR
BENGALURU – 560 016.

... RESPONDENT

(BY SRI HARISH GANAPATHI, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER OF COGNIZANCE DATED 04.03.2022 PCR NO. 5436/2022 PASSED BY THE XXXIX ACMM, BENGALURU, (ANNEXURE-B); DIRECTION TO QUASH THE COMPLAINT DATED 08.02.2022 IN PCR NO. 5436/2022 PROVIDED BY THE RESPONDENT BEFORE THE XXXIX ACMM, BENGALURU FOR OFFENCES PUNISHABLE UNDER SECTIONS 34, 120A, 166A, 323, 325, 351 AND 506 OF IPC. (ANNEXURE-A) AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.07.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

The petitioner is before this Court calling in question an order dated 04-03-2022 passed by the XXXIX Additional Chief Metropolitan Magistrate, Bengaluru in P.C.R.No.5436 of 2022 by which cognizance is taken and summons is issued to the petitioner in the case registered by the respondent under Section 200 of the Cr.P.C., alleging offences punishable under Sections 120A, 166A, 323, 325, 351, 506 r/w 34 of the IPC.

2. Facts, in brief, germane are as follows:-

The petitioner is an officer of the Indian Police Service working in the State of Karnataka. It is the case of the complainant that she approached the petitioner when he was holding the post of in-charge Commissioner of Police, Bangalore City to file a complaint against one Sister Shalini for intimidation and threats to withdraw a pending case filed under the Protection of Children from Sexual Offences Act ('POCSO' Act) in Special Case No.31 of 2016. The complainant is said to have spoken to the petitioner with regard to the said case and had also requested him to take action against the said Sister Shalini. The complainant again visits the office of the petitioner and even on the said date the enquiry was about solving the problem of such intimidation of the Sister Shalini.

3. On 11-02-2019 the complainant again visits the chambers of the petitioner. It is here the allegation is that the petitioner insisted upon the complainant not to press the matter with regard to the case of intimidation of Sister Shalini on the score that she was an influential person. The complainant did not budge but insisted the petitioner to receive the complaint as it was his duty to

receive the said complaint. At that point of time, it is alleged that the petitioner had threatened the complainant that next time if she steps into the office, he will book a false case against her and make her run from pillar to post. It is also alleged that the petitioner along with other police personnel assaulted the complainant in his office. The complainant alleges that since she was completely bruised and physically in pain approached the doctor for assistance as her right eye due to the act of the petitioner was completely damaged.

4. The complainant is said to have approached the office of the Commissioner of Police again and sought action as was sought for earlier. The action was not initiated. She approaches State Human Rights Commission on 14-05-2019 and writes to the Ministry of Home Affairs, Ministry of Women and Child Development, Government of India. No action is taken. This is the averment in the complaint. Therefore, after about 3 years of said incident, she, on 19-02-2022 comes up with a private complaint invoking Section 200 of the Cr.P.C., alleging offences punishable as afore-quoted. On receipt of the complaint, the learned Magistrate

by his order dated 04-03-2022 takes cognizance of the offences alleged as afore-quoted and thereafter posts the matter for recording of sworn statement. Sworn statement of the complainant was recorded and the documents produced by the complainant were taken on record as Exs.P1 to P28. After all these acts, the learned Magistrate takes one year to issue summons. It is this order that has driven the petitioner to this Court in the subject petition.

5. Heard Sri Prabhuling K. Navadgi, learned senior counsel appearing for the petitioner and Sri Harish Ganapathi, learned High Court Government Pleader appearing for the respondent.

6. The learned senior counsel submits that the petitioner on the said date was holding the post of Commissioner of Police on in-charge basis. All the events are said to have happened on 11-02-2019 and the offences so alleged are undoubtedly in the discharge of his official duties. Whatever is the offence, if it has been committed in discharge of his official duties, sanction as necessary under Section 197 of the Cr.P.C., would be imperative. He would submit that the concerned Court could not have taken

cognizance of the offences without at the outset appropriate sanction being placed for such prosecution by the complainant before the learned Magistrate.

6.1. The learned senior counsel would further contend that a perusal at the complaint would indicate that it is an incident which appears to have happened on 07-02-2019, 08-02-2019 and 11-02-2019. If the complainant had been bruised, assaulted or any other incident had happened as is projected, the complainant need not have waited for 3 years to register the crime as a private complaint which is filed on 19-02-2022 though it is dated 08-02-2022. He would submit that this unexplained delay would undoubtedly vitiate the proceedings on the score that it is *mala fide* and instituted only to settle other scores with the Department or with the petitioner. He would submit that sanction to prosecute and delay, would cut at the root of the matter.

7. The complainant during the pendency of proceedings before this Court has died. Since she is no more, this Court directed the State to assist the Court, notwithstanding the fact that the issue

was a private complaint and the State is not a party to the proceedings. The State then secures the records and the learned High Court Government Pleader has made his submissions.

8. In reply, the learned senior counsel would further contend that this very complainant had registered close to 56 complaints against several officers, only to buttress his submission that she is a habitual complainant. He would stop at that since the complainant is no more.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record. In furtherance whereof, the issue that falls for my consideration is, whether the two factors noticed *supra* would cut at the root of the matter and would vitiate the entire proceedings.

10. The petitioner is an Indian Police Service, Officer, who at the relevant point in time was said to be working as Commissioner of Police, in-charge or otherwise. The incident emerges on 07-02-2019 when the complainant visits the office of the petitioner, and

files a complaint against one Sister Shalini for intimidating and threatening her to withdraw a POCSO case that she had registered in Special case No.31 of 2016. Two days later she is said to have visited the office of the petitioner again. The facts freeze on 11-02-2019. **Three years** later, on 19-02-2022, a private complaint is registered against the petitioner under Section 200 of the Cr.P.C. It is necessary to notice relevant paragraphs in the complaint and the prayer sought therein. They read as follows:

> *"2. The complainant submits that she had approached the Commissioner of Police, Bangalore on 07.02.2019 and filed a complaint against one Sister Shalini for intimidation and threatening to withdraw the POCSO case having numbered Spl.31 of 2016. The complainant further submits that on the said date the Commissioner of Police was on leave and Mr. Alok Kumar was acting Commissioner. Therefore, the said complaint was filed and the complainant had spoken to Mr. Alok Kumar with respect to the intimidation that she had been facing and requested that action may be initiated against the said Sister Shalini.*
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> *3. The complainant submits that Mr. Alok Kumar refused to receive the said complaint and insisted that the complainant approach on the next day that is on 08.02.2019. Whereas Mr. Alok Kumar was also not present on 8th and hence the complainant had returned back and re-approached on 11-02-2019. Since the complainant had already been a complainant in one of the POCSO cases filed, she had been talking to some of the other NGO members who had been present on the said day in the office of the Commissioner. After a while Mr. Alok Kumar called the complainant to his chamber in order to discuss with regard to the complaint filed by the petitioner.*
>
> *… … …*

5. The complainant being completely bruised and physically in pain having no other option reached to her residence and the next day she approached the doctor for assistance since her right eye was completely damaged.

6. The body pain had been persistent and hence she approached Victoria Hospital on 20-02-2019 and the complainant submits that a medico legal case had been reported by the Victoria Hospital to Vidhana Soudha Police Station. One Mr. Budhihall ASI had approached the complainant while she had been in the hospital and asked the complainant to go to Vidhana Soudha Police Station there the complainant met one Mr. Manjunath and claimed to be the Inspector of the Police Station, the said officer categorically declined to receive the complaint against his senior officer.

7. The complainant submits that after the above said incident the complainant approached the office of the Police Commissioner to file a complaint against Mr. Alok Kumar said complaint. Since no action was initiated against Mr. Alok Kumar and Sister Shalini the complainant then filed complaint with respect to the above incident to the State Human Rights Commission dated 14-05-2019. The copy of the said complaints is herewith attached along with this complaint. After which the copies had been sent to the Ministry of Home Affairs, Ministry of Women and Child Development, the Chief Minister of Karnataka, the Home Minister of Karnataka, the Home Secretary, DIG, Bangalore Press Club, Karnataka State Commission for Women and the Commissioner of Police, Bangalore. In spite of these many departments requisitions having been no action have been initiated against Mr. Alok Kumar with this regard.

8. It is submitted by the complainant that she had approached the office of the Commissioner of Police requesting for help in prosecuting Sister Shalini whereas in the absence of the Commissioner, Mr. Alok Kumar had attended the complainant and insisted that no complaint should be filed against Sister Shalini and for denying to comply to his directions the complainant was physically assaulted in his chamber on 11-02-2019.

9. In spite of filing numerous complaints before numerous authorities no action has been initiated against the above named accused. The police also denied to receive the complaint and to initiate an enquiry or to prosecute the accused for the alleged offence."

… … ….

PRAYER

It is, therefore, must respectfully prayed that this Hon'ble Court may be pleased to –

a. Summon, prosecute and punish the Accused under Section 34, 120-A, 166A, 323, 325, 351 and 506 and all other relevant Provisions of the India Penal Code, 1860.

b. Such other and further orders may be passed as may be deemed fit and proper by this Hon'ble Court."

(Emphasis added)

Based upon the said complaint, cognizance is taken. The order taking cognizance reads as follows:

"The complainant has filed present private complaint u/s 200 of the Cr.P.C for the offence punishable under Sections 120(A), 166A, 323, 325, 351 and 506 of IPC.

The complainant has filed the present private complaint against Police Commissioner, Infantry Road, Bengaluru and other 4 unknown police constables of the office of the Police Commissioner, Infantry Road, Bengaluru.

Heard counsel for complainant about prior sanction for prosecution and also about taking cognizance.

On perusal of averments made in the complaint it is the allegation against the accused that the complainant earlier had approached the Commissioner of Police on

07.02.2019 and filed a complaint against one Sister Shalini for criminal intimidation and threatening to withdraw POCSO case filed in Special Case No.31 of 2016. On the said date the Commissioner of Police was on leave and the present accused No.1 was acting Police Commissioner. It is further allegation that on said date the accused No.1 had refused to receive the said complaint and told to come on next day. On next day also, the accused No.1 was not present in the office. Therefore, the complainant again went to the office of accused No.1 on 11-02-2019. On said date the accused No.1 had called the complainant to his chamber in order to discuss with the complaint filed by present complainant against said Sister Shalini, the accused no.1 insisted the present accused to withdraw the complaint filed against the said Shalini and when the complainant stated that it is duty of police to receive the complaint and register a FIR, at that time the accused No.1 along with other police staff physically assaulted the complainant in his office. It is also alleged in the complaint that the accused No.1 threatened to the complainant by stating that if she comes to the Police Station or to the office of the Commissioner again, then false case will be filed against her. So on careful perusal of averments made in the complaint, it is the allegation against the accused that they insisted to withdraw the earlier complaint filed against sister Shalini and accused No.1 along with other police staff had physically assaulted to the complainant.

The complainant along with the complaint has produced documents which shows that earlier the present complaint had filed against one Sister Shalini by alleging that said sister Shalini had gave criminal intimidation to her to withdraw the complaint filed by present complainant against one Kundan Kumar Singh who caused sexual harassment to daughter of the present complainant. Further documents produced by the complainant along with the complaint shows that, when the complainant went to the office of Police Commissioner, when there was alleged physical assault on her by present accused, she filed complaint before the Commissioner of Police, Bengaluru City Police, Infantry Road, Benglauru on several occasion and also gave a representation before the then Home Minister of

Government of Karnataka. When there was no action taken against the present accused for the alleged act, the complainant has filed present complaint against the accused.

As it is discussed above, the complainant has filed the present complaint against the accused No.1 who is the public servant and also against the other police staff of office of Commissioner of Police. The counsel for complainant has argued that the accused have not done their alleged act in the official capacity and therefore prior sanction is not required to register a private complaint against said accused. The counsel for complainant has relied upon several reported citations reported in ***2017 (2) AKR 584 –Geetha Kulkarni and others v. State by Vivek Nagar, by others, 2013 (3) KCCR 2145 –State by PSI Mahalakshmi Lay-out PS Vs. DP Kumar; 2020(4) AKR 791 Vikas Kumar Vs. Police Inspector, Town PS, Chickamangalore and another and also another ruling reported in AIR 2019 Supreme Court 1691 Devendra Prasad Singh Vs. State of Bihar and another.*** *On careful perusal of the principle laid down in aforesaid rulings, it has been categorically held by Hon'ble High Court of Karnataka and also Hon'ble Supreme Court of India that when there is criminal intimidation or assault caused by any police official, such act of police official does not come under discharge of official duty and sanction for prosecuting police officials not warranted. On perusal of the facts involved in all the afore-quoted rulings there was allegation against the police officials about giving of criminal intimidation and also giving threat and causing hurt when the public had went to police station for lodging the compliant. The facts involved in the present case also similar to the facts stated in the afore quoted rulings and it has been categorically held that causing alleged hurt, giving criminal intimidation by the police officials is not having nexus or relation with discharge of official duty of the Government officials and therefore, sanction for prosecution is not necessary. The principle laid down in the aforesaid rulings is aptly applicable to the case on hand. It is the allegation against the present accused that they gave criminal intimidation to the complainant and also assaulted her by insisting her to withdraw the complaint filed against one sister Shalini. The alleged act does not come under the purview of official duty and therefore, prior sanction to prosecute the case against her present accused is not required.*

> *As it is discussed above, the complaint and also material documents produced by the complainant it discloses that complainant prior to the lodging of present private complaint she had exhausted all the remedies available to her before higher police officials and when there was negative response by the said police officials she filed present private complaint against the accused. The present complainant has also filed an affidavit as required u/s 154 & 156 (3) of Cr.P.C. Therefore, on careful scrutinization of the private complaint filed by the complaint and all the materials produced by the complainant there are prima facie materials to proceed with the case. Therefore, this court has taken cognizance of the said offences punishable u/s 120-A, 166A, 323, 325, 351 and 506 of IPC and proceed to record the sworn statement of the complainant. Therefore, this Court pass the following:*
>
> *ORDER*
>
> *Office to register this private complaint as PCR and for sworn statement of complainant Call on 21-04-2022."*
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> *(Emphasis added)*

The concerned Court records a finding that sanction is not required in the case at hand, as the case is of criminal intimidation and causing hurt when the complainant had been to the office of the petitioner for lodging a complaint. It is construed, rather misconstrued that sanction is not necessary in the case at hand. Section 197 of the Cr.P.C., reads as follows:

> ***"197. Prosecution of Judges and public servants.—*** *(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the*

sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013—

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

(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 Constitution 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."*

Interpretation of Section 197 of Cr.P.C., need not detain this Court for long or delve deep into the matter. . 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.

11. 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***

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

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 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

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

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 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:*
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> > *"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 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***

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

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:*
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> ***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 Cr.P.C., has to be construed narrowly and in a restricted manner.***
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> ***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***

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

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 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*

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

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)

12. 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 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*

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[6] *2023 SCC OnLine SC 900*

*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, if have nexus to performance 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.

13. On a coalesce of the judgments rendered by the Apex Court as 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 the alleged acts are 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 the petitioner was in discharge of his official duty. Therefore, sanction under Section 197 of the Cr.P.C., was undoubtedly imperative.

14. The offences alleged in the case at hand are the ones punishable under Sections 166A, 323, 325, 351 and 506 of the IPC. The facts narrated in the complaint, as quoted *supra*, would leave none in doubt that the actions alleged are all in the discharge of official duty of the petitioner, as the complainant is said to have visited the office of the petitioner to register a complaint and at that point in time it is alleged that the petitioner had threatened the complainant. If this cannot be held in discharge of official duty, it is ununderstandable as to what else it can be. The concerned Court has deliberately glossed over the settled principle of law. The concerned Court notices that there is no sanction and records, that sanction is not necessary. This, on the face of it, is erroneous and could not have been held so. Therefore, on the issue of sanction, the petition deserves to succeed as it cuts at the root of the matter. But, on the ground of sanction if the order of cognizance is quashed, it would not obliterate the complaint. The complaint would still be alive. Therefore, I deem it appropriate to notice whether the complaint should be kept alive or obliterated.

15. The incident is said to have taken place, even according to the complainant, on three days. As quoted hereinabove, on 07-02-2019, 08-02-2019 and 11-02-2019. The allegation was intimidation and causing hurt which had left the complainant bruised. If that be so, the complainant need not/should not have waited for three long years i.e., **36 months**, to register a complaint, that she had been bruised and intimated by the petitioner three years ago. A perusal at the complaint, which is quoted hereinabove, would clearly indicate not even a speck of explanation is rendered for the delay of three years in registering the complaint. Therefore, permitting even the complaint to be alive would become contrary to law, as it is shrouded with complete improbability. Delay in such cases defeats acts of setting the criminal law in motion. The Apex Court considers this very issue and answers that such complaints or proceedings should not be permitted to continue. The Apex Court in the case of ***CHANCHALPATI DAS v. STATE OF WEST BENGAL***[7] has held as follows:

"…. …. ….

[7] *2023 SCC OnLine SC 650*

10. *Having gone through the pleadings of the parties and the documents on record and having anxiously considered the submissions made by the learned counsel for the parties, it emerges that according to the complainant-respondent, a letter in the form of complaint was written by the Branch Manager of the ISKCON Kolkata,* ***on 30.09.2006 addressed to the officer in-charge, Ballygunge Police Station, Kolkata, in respect of an alleged theft of a bus having taken place in 2001, however, no action was taken by the said police station. Though, the complainant had reported the matter to the concerned Police Station earlier on 22nd May, 2002, however, no action was taken in that regard. It is pertinent to note that with regard to the said allegations against the concerned police station, there is nothing on record to suggest that either the said report dated 22.05.2002 or the letter dated 30.09.2006 was ever received by the concerned police station or any follow up action was taken by the respondent-complainant in that regard. According to the respondent-complainant, since no action was taken on the letter dated 30th September, 2006 written to the concerned Police Station, the complaint was lodged in the court of Chief Judicial Magistrate, Alipore on 10th February, 2009, which was registered as C.R. Case No. 747 of 2009, seeking investigation under Section 156(3) of Cr. P.C.***

11. It is again pertinent to note that, even as per the case of the complainant, the alleged incident of bus theft had taken place in the year 2001, and it was only in 2009 that the substantial complaint was made in the Court of Chief Judicial Magistrate, Alipore*. It is just not believable that the concerned Ballygunge Police Station, Kolkata would not have taken any action on the report made in 2002 on behalf of the powerful body like the ISKCON Kolkata, or on the letter dated 30.09.2006 written by the Branch Manager of the ISKCON, Kolkata. The respondent no. 2-complainant also did not take any concrete action for getting the said complaint registered with regard to the alleged theft of bus for a long period of eight years, till the complaint in the Court was filed in the year 2009. In the opinion of the Court such an inordinate delay of eight years in filing the complaint in the court itself would be a sufficient ground to quash the proceedings. If the luxury bus owned by the ISKCON, Kolkata Branch in 1998 was*

so precious to them, they would not have sat silent for such a long time of eight years. In our opinion, the criminal machinery set into motion by filing the complaint for the alleged incident which had taken place eight years ago, that act itself was nothing but a sheer misuse and abuse of the process of the court.

12. *That apart, from the bare perusal of the complaint filed before the Court, on the basis of which the FIR was registered at the Ballygunge Police Station on 20th February, 2009, it is discernible that except bald allegations made in the complaint with regard to the theft of bus in question there was no material or document produced by the complainant to substantiate the allegations against the appellants. Even after the investigation of the said complaint, there was no evidence collected by the investigating officer to prima facie satisfy the ingredients constituting the alleged offences under Sections 468, 471, 406 and 120B of IPC. Even if the allegations made in the complaint as well as in the Charge sheet are taken at their face value none of the ingredients constituting the alleged offences are culled out. The learned Senior Counsel Mr. Shyam Divan for the appellants had strenuously urged relying upon the documents pertaining to the transfer of ownership and registration of the said bus, that the said documents were executed by the then authorized persons of the ISKCON Kolkata, in our opinion, the said documents could not be considered in these proceedings, the same being not the part of the charge-sheet papers. In any case, there is nothing to suggest from the other documents on record of the instant appeals that the investigating officer had even bothered to collect any cogent or substantive evidence against the appellants to prosecute them for the alleged offences. There was no expert opinion obtained or scientific evidence collected on the documents allegedly forged to show as to by whom, when and how the theft of vehicle and forgery of documents were committed. Under the circumstances, allowing such prosecution to continue would not only be an empty formality but would be gross wastage of court's precious time.*

13. It cannot be gainsaid that the High Courts have power to quash the proceedings in exercise of powers under Section 482 of Cr. P.C. to prevent the abuse of process of any Court or otherwise to secure the ends of

justice. Though the powers under Section 482 should be sparingly exercised and with great caution, the said powers ought to be exercised if a clear case of abuse of process of law is made out by the accused. In the State of Karnataka v. L. Muniswamy[11] had held that the criminal proceedings could be quashed by the High Court under Section 482 if the court is of the opinion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings are to be quashed.

14. This Court, way back in 1992 in the landmark decision in case of State of Haryana v. Bhajan Lal (Supra), after considering relevant provisions more particularly Section 482 of the Cr. P.C. and the principles of law enunciated by this Court relating to the exercise of extra-ordinary powers under Article 226, had laid down certain guidelines for the exercise of powers of quashing, which have been followed in umpteen number of cases. *The relevant part thereof reads as under:*

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by*

police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

15. *In State of A.P. v. Golconda Linga Swamy[12] this Court had observed that the Court would be justified to quash the proceedings if it finds that initiation or continuance of such proceedings would amount to abuse of the process of Court.*

16. *As regards inordinate delay in filing the complaint it has been recently observed by this Court in Hasmukhlal D. Vora v. State of Tamil Nadu[13] that though inordinate delay in itself may not be a ground for quashing of a criminal complaint, however unexplained inordinate delay must be taken into consideration as a very crucial factor and ground for quashing a criminal complaint.*

17. In the light of afore-stated legal position, if the facts of the case are appreciated, there remains no shadow of doubt that the complaint filed by the respondent-complainant after an inordinate unexplained delay of eight years was nothing but sheer misuse and abuse of the process of law to settle the personal scores with the appellants, and that continuation of such malicious prosecution would also be further abuse and misuse of process of law, more particularly when neither the allegations made in the complaint nor in the chargesheet, disclose any prima facie case against the appellants. The allegations made against the appellants are so absurd and improbable that no prudent person can ever reach to a conclusion that there is a sufficient ground for proceeding against the appellants-accused.

18. Before parting, a few observations made by this Court with regard to the misuse and abuse of the process of law by filing false and frivolous proceedings in the Courts need to be reproduced. In the Court. In Dalip Singh v. State of Uttar Pradesh it was observed that:

> ***"1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings."***

19. *In Subrata Roy Sahara v. Union of India it was observed as under:*

> *"191. The Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims."*
>
> ***20.*** *We would like to add that just as bad coins drive out good coins from circulation, bad cases drive out good cases from being heard on time. Because of the proliferation of frivolous cases in the courts, the real and genuine cases have to take a backseat and are not being heard for years together. The party who initiates and continues a frivolous, irresponsible and senseless litigation or who abuses the process of the court must be saddled with exemplary cost, so that others may deter to follow such course. The matter should be viewed more seriously when people who claim themselves and project themselves to be the global spiritual leaders, engage themselves into such kind of frivolous litigations and use the court proceedings as a platform to settle their personal scores or to nurture their personal ego."*
>
> *(Emphasis supplied)*

The Apex Court, in the afore-quoted judgment, clearly holds that complaints that are stale should not be permitted to lie over and in exercise of jurisdiction under Section 482 of the Cr.P.C., if the Court comes across such complaints of gross delay, totally unexplained, should obliterate the same.

16. The aforesaid two factors, one of sanction not being in place as on the date of taking cognizance by the concerned Court and the delay of three years in registering the complaint, completely unexplained, would cut at the root of the matter. On

these two scores the petition deserves to succeed by obliteration of the order impugned and the entire proceedings, failing which, it would become an abuse of the process of the law and result in miscarriage of justice.

17. For the aforesaid reason, the following:

O R D E R

(i) Writ Petition is allowed.

(ii) Entire proceedings in P.C.R.No.5436 of 2022 pending before the XXXIX Additional Chief Metropolitan Magistrate, Bengaluru including the order passed therein on 04-03-2022 stand quashed.

Consequently, I.A.Nos.1 and 2 of 2024 stands disposed.

Sd/-
(M. NAGAPRASANNA)
JUDGE

bkp
CT:MJ