IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/03/2004

CORAM

THE HONONOURABLE MR.JUSTICE S.ASHOK KUMAR

CRIMINAL REVISION CASE No. 1215 of 2001
and
Crl.M.P.Nos. 8117 and 8677 of 2001

State rep. by
Dy.Superintendent of Police
CBI/SCB
A Wing, 3rd Rajaji Bhavan
Besant Nagar,
Chennai .. Petitioner

-Vs-

K.Kalimuthu
presently Speaker of
Tamil Nadu Legislative Assembly,
"Ezhil",
Greenways Road,
Chennai-28 .. Respondent

Criminal Revision Cases preferred against the order passed by the Principal Special Judge for CBI Cases, Chennai. in Crl.M.P.Nos. 346 of 2001 in C.C.No.22 of 1997, dated 18.7.2001.

!For Petitioners :: Mr.N.Ranganathan
Spl.P.P.,for CBI cases

^For respondent :: Mr.P.Thiagarajan

:O R D E R

This revision has been filed against the order of the Principal Special Judge for CBI Cases, Chennai made in Crl.M.P.No:346 of 2001 in C.C.No.22 of 1997, dated 18.7.2001.

2. The brief facts of the case are as follows:-
The petitioner-police filed a report under Section 173 Cr.P.C., against the respondent/accused No.24 and 31 others Under Sections 120 B IPC r/w Sections 420, 419, 467, 471, 477-A, 161 and 165-A IPC and Section 5(2) r/w 5(1)(a) & (d) of the Prevention of Corruption Act, 194 7 on the allegation that the accused entered into a criminal conspiracy between march, 1983 and

June 1984 at Madras, Gwalior and other places to commit offences of cheating, cheating by personation, forgery of valuable securities using the forged documents as genuine knowing them to be forged, falsification of accounts and criminal misconduct and in pursuance of the said criminal conspiracy K.Kalimuthu/A-24 informed the officers of eight different Nationalised Banks of the availability of huge surplus funds with the Tamil Nadu State Agricultural Marketing Board that was functioning under his control and that the same can be converted into short term deposits in their Banks if they were prepared to sanction loans to Robin Mayne/A-1 and his friends for purchase of second hand lorries, while the banks so contacted agreed, Robin Mayne/A-1 himself collected cheques from the Tamil Nadu State Agricultural Marketing Board and deposited the same with ten different branches of eight Nationalized Banks and in turn he and his friends availed loans to the tune of about Rs.56 lakhs for alleged purchase of second hand lorries and to substantiate their claims of having purchased lorries, produced false and forged R.C.Books, No Objection Certificates, Valuation Certificates and Sellers' receipts after changing the number plates of the vehicles and thus A-24 abetted the offences of impersonation by the other accused, and R.Manickam/A-25, P.A., to K.Kalimuthu/A-24 telephoned to the manager, Syndicate Bank Extension Court, Fort St.George, Chennai that A-24 was keen on meeting him and after the Manager met A-24 in his office, Robin Mayne/A-1 and P.R.T.Sooriya Kumar/A-2 were introduced as Robin Mayne and " Arumugam" suppressing the fact that Arumugam was P.R.T.Sooriya Kumar inside the Room of A.25, R.Manickam. Thus A.1 to A.25 cheated eight Nationalised banks to the tune of Rs.56 lakhs and obtained corresponding wrongful gain for themselves.

3. After the Police Report was filed five accused absconded and two accused died. Therefore the case was split against 25 accused persons who were attending the court. A-7, B.Bhujangan filed Crl.O.P.No.6223 of 1999 before this court and this court by order dated 5.12.20 0 directed the Principal Special Judge for CBI Cases, Chennai to dispose of the case not later than 30.9.2001.

4. Charges were framed against twenty five accused including respondent/accused No.24 on 2.3.2001 by the Principal Special Judge for CBI Cases U/s.120B IPC r/w Sections 420, 419, 467, 471, 477-A, 161 and 16 5-A IPC and Section 5(2) r/w 5(1)(a) & (d) of the Prevention of Corruption Act, 1947.

5. The following three charges were framed against the respondent/ A-24:-

Charge No:1: Section 120B IPC r/w Sections 420, 419, 467, 471, 477A, 161 and 165-A IPC and Section 5(2) r/w 5(1)(a) & (d) of the Prevention of Corruption Act, 1947.
Charge No:41: Section 109 IPC r/w 420, 419, 467, 468 and 471 IPC
Charge No:184: Section 5(2)r/w 5(1)(d) of Prevention of Corruption Act, 1947.

6. The witnesses were summoned for examination on 19.4.2001, 8.5.200 1, 25.5.2001 and 25.6.2001, they were not examined by the Special court for CBI Cases. On 19.4.2001, this respondent/A-24 filed Crl.M.P. No:346 of 2001

before the trial court for discharging him on the ground that at the relevant period, the respondent was a Minister for Agriculture in Government of Tamil Nadu and there is a direct nexus and relationship between the discharge of his official duties and the offences alleged and therefore prior sanction for prosecution of the respondent/A-24 is sine qua non and in the absence of the same, the court cannot take cognizance of the offence.

7. The Petitioner-CBI filed a Counter which reads as follows:-
"The acts and omissions of this accused fall within the definition of more than one offence. He has been charge sheeted under Sec.5(2) r/w 5(1)(d) of the Prevention of Corruption Act, 1947 as well as under different provisions of the Indian Penal Code. The various ingredients of these offences are different. The offence of criminal misconduct under the Prevention of Corruption Act does not imply that the acts or omissions of the accused are while acting or purporting to act in the discharge of his official duty which is a phrase used U/s.197 of the Code of Crl.Procedure, 1973. It is true that the accused was a public servant while the offences mentioned in this case have been committed. For prosecution of offences coming under hat Act sanction U/s.6(1) is necessary only if the accused-public servant is continuing in office at the time of taking cognizance of these offences by a competent court. In this case sanction under the Act was not necessary as at the time of taking cognizance of offences under he Act he was not a public servant(Minister).

Sanction U/s. 197 Cr.P.C is necessary for taking cognizance of some offences under the Indian Penal Code which can be considered to be committed while the accused was acting or purporting to act in the discharge of his official duty. Those offences of IPC mentioned in the charge as the accused has committed such as Section 120B IPC r/w Sections 420, 419, 467, 471, 477-A,

161, 164 (A), 468 are not committed by the accused while acting or purporting to act in the discharge of his official duty considering the facts of each of these offences."

8. The Trial Court by order dated 18.7.2001, discharged the accused on the ground that Under Section 197(1) Cr.P.C., even a public servant after relinquishing his office is entitled to get protection under Section 197(1) Cr.P.C., for the offences alleged to have been committed during the course of his official duties and which are directly and reasonably connected with the official duties and the failure to obtain prior sanction from the competent authority to prosecute the respondent /A-24 for the alleged offences under the Indian Penal Code is against law and thus upheld the c ontention of the respondent/A-24.

9. The Trial Court further held that the other offences were committed in consequence of the criminal conspiracy and when the offences committed under the Indian Penal Code cannot be maintained, there cannot be a separate and independent charge under Section 5(1)(d) r/w 5(2) of the Prevention of Corruption Act and on that ground also the respondent/A-24 was entitled for discharge for the offences under the Prevention of Corruption Act

also. Aggrieved over the said order, this revision has been filed by the petitioner-CBI.

10. The learned Special Public Prosecutor for C.B.I., would contend that the respondent was a Minister of Agriculture in Government of Tamil Nadu and as such a Public Servant during 1983-1984 and the Agricultural Marketing Board was in his Control. According to the Investigation and statement of witnesses the respondent as a Minister contacted Mangers of eight Nationalised Banks viz., State Bankof India, United Bank of India, UCO Bank, Bank of Baroda, Indian Bank, Indian Overseas Bank, Vijaya Bank and Corporation Bank either by himself or through his Personal Assistant, Manickam/A-25 and introduced A-1, Robin Mayne and promised the Managers of the banks that huge deposits will be given to them from Tamil Nadu Agricultural Marketing Board as short term deposits so that in turn the said banks will give loans to A-1 and his friends for purchase of vehicles as and when they approach the Banks. Thus a total sum of Rs.56 lakhs was obtained as Loans on the basis of forged R.C.Books, No Objection Certificates, Valuation Certificates and other forged documents with regard to 39 vehicles.

11. A-1 to A-4 are private persons. A-5, A-9, A-10, A-11 A-12 and A-13 are charge sheeted for fabrication of forged R.C.Books and No Objection Certificates. A-6, A-7, A-8 are charge sheeted for issuing the Valuation Certificates, on the basis of which the loans were advanced. A-14 to 23 are officials of Transport Department who gave false certificates as if the vehicles were produced for inspection and second hand purchase of the vehicles was certified by creating forged R.C. Books.

12. The first point for consideration is Whether prior sanction is necessary for prosecuting against a public servant who ceased to be a public servant on the date of taking cognizance of the offence?

13. When the charge sheet was filed on 13.6.1998, admittedly, the petitioner was not a Minister and therefore he was not a public servant. The law is well settled with regard to the necessity of obtaining prior sanction for an accused who is ceased to be a public servant on the date of taking cognizance of the offence under the Prevention of Corruption Act.

14. In 1969 SCC (Crl) 1031,(State of Kerala vs. V.Padmanabhan Nair), their Lordships of the Supreme Court held as follows:-

"4. As the matter was taken up before the High Court, the decision of this court in Harihar Prasad V. State of Bihar (1972 (3) SCC 89) was cited before the learned Single Judge, who heard the matter. It was held in the said decision that : (SCC Head note)
"As far as the offence of criminal conspiracy punishable under section 120-B, read with Section 409 of the Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act are concerned, they cannot be said to be of the nature mentioned in section 197 of the Code of Criminal Procedure. It is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal

Procedure is, therefore, no bar to a prosecution under Section 120-B, read with Section 409 of the Penal Code."
Learned Single Judge tried to distinguish the said decision by observing thus:
"But here he is charged under Sections 406, and 409 also which relate to criminal breach of trust by a public servant. Therefore, sanction is necessary to prosecute the petitioner(respondent)."

5. In S.A.Venkataraman V. State (AIR 1958 SC 107) and in C.R.Bansi V.State of Maharashtra (1970 (3) SCC 537) this court has held that:
"There is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the court was asked to take cognizance, although he had been such a person at the time of offence was committed."

When the newly worded section appared in the Code (Section 197) with the words "when any person who is or was a public servant" (as against the truncated expression in the corresponding provision of the old Code of Criminal Procedure, 1898) a contention was raised before this Court in Kalicharan Mahapatra Vs. State of Orissa (1998 (6) SCC 411) that the legal position must be treated as changed even in regard to offences under the PC Act also. The said contention was, however repelled by this court in Kalicharan Mahapatra wherein a two Judge Bench has held thus:-
"A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 19 of the Act, if he continues to be a public servant when the court takes congnizance of the offence. But if he ceases to be a public servant by that time, the court can take cognizance of the offence without any such sanction."

6. The correct legal position, therefore, is that an accused facing prosecution for offences under the PC Act cannot clam any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. So the High Court was at any rate wrong in quashing the prosecution proceedings insofar as they related to offences under the PC Act.

7. That apart, the contention of the respondent that for offences under Sections 406 and 409 read with Section 120-B of IPC sanction under Section 197 of the Code is a condition precedent for launching the prosecution is equally fallacious. This court has stated the correct legal position in Shreekanthiah Ramayya Munnipalli Vs.State of Bombay (AIR 1955 SC 287) and also Amrik Singh V. State of Pepsu (AIR 195 5 SC 309) that it is not every offence committed by a public servant which requires sanction for prosecution under Section 197 of the Code, nor even every act done by him while he is actually engaged in the performance of his official duties. Following the above legal position it was held in Harihar Prasad (1972 (3) SCC 89) as follows:
"As far as the offence of criminal conspiracy punishable under Section 120-B, rad with Section 409, Indian Penal Code isconcerned and also Section 5(2) of the Prevention of Corruption Act is concerned, they cannot be said to be of the nature mentioned in Section 1907 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while

discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar."

15. In 1998 SCC (Cri) 1455 (Kalicharan Mahapatra Vs. State of Orissa), the Supreme Court held as follows:-

"7. There is no indication anywhere in the above provisions that an offence committed by a public servant under the Act would vanish off from penal liability at the moment he demits his office as public servant. His being a public servant is necessary when he commits the offence in order to make him liable under the Act. He cannot commit any such offence after he demits his office. If the interpretation now sought to be placed by the appellant is accepted, it would lead to the absurd position that any public servant could commit the offence under the Act son before retiring or demitting his office and thus avert any prosecution for it or that when a public servant is prosecuted for an offence under the Act, he can secure an escape by protracting the trial till the date of superannuation.

14. The result of the above discussion is thus: A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 1 9 of the Act if he continues to be a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time, the court can take cognizance of the offence without any such sanction. In other words, the public servant who committed the offence while he was a public servant,is liable to be prosecuted whether he continues in office or not at the time of trial or during the pendency of the prosecution."

16. From the judgments of the Supreme Court cited above, it is clear that for prosecution of a public servant who ceased to be a public servant at the time of taking cognizance of the offence, no sanction is necessary.

17. The next point for consideration is whether the sanction is required under section 197 of the new Cr.P.C.,, since the alleged acts of the respondent-accused are said to be done in the course of his official duties?

18. On this aspect several judgments of the Supreme Court could be taken up for consideration.

19. In 1972 Crl.L.J. 707 (Harihar Prasad Vs.State of Bihar), the Supreme Court while deciding a case of three of the officers of the State of Bihar and other contractors who were alleged to have entered into a criminal conspiracy for committing offence of criminal breach of trust and cheating in respect of large amounts of Government money earmarked for a Project known as "Mahuadar Development Block Pilot Project", held as follows:-

"74. The next point was with regard to consent or sanction. There is no doubt that in respect of B.P.Sinha consent was properly given by the Deputy Comissioner. So consent was also given in respect of N.K.Banerjee, and Harihar Prasad by the Chief Secretary. This is not a case of sanction or

consent under Section 196-A Criminal P.C., On the question of the applicability of Section 197 Code of Criminal Procedure, the principle laid down in two cases, namely Shreekantiah Ramayya Munipali V.State of Bombay AIR 1955 SC 287 and Amrik Singh Vs. State of Pepsu AIR 1955 SC 309 was as follows:-

"It is not every offence committed by a public servant which requires sanction for prosecution under Section 197(1) of the Code, nor even every act done by him while he is actually engaged in the performance of his official duties: but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary."

"The real question therefore is whether the acts complained of in the present case were directly concerned with the official duties of the three public servants. As far as the offence of criminal conspiracy punishable under section 120-B, read with Section 409 of the Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act are concerned, they cannot be said to be of the nature mentioned in section 197 of the Code of Criminal Procedure. It is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar.

20. In 1997 Crl.L.J.,2491 (Shambhoo Nath Misra Vs. State of U.P), the Supreme Court wherein the accused has been said to have committed an offence of fabrication of records and misappropriation of public funds, held as follows:

"4. Section 197(1) postulates that "when any person who is a public servant not removable from his office, save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him,while acting or purporting to act in the dischargee of his official duty, no court shall take cognizance of such offence except with the previous sanction of the appropriate Government/ Authority." The essential requirement postulated for sanction to prosecute the public servant is hat the offence alleged against the public servant must have been done while acting or purporting to act in the discharge of his official duties. In such a situation, it postulates that the public servant's act is in furtherance of his performance or his official duties. If the act/omission is integral to performance of public duty, the public servant is entitled to the protection under Section 197(1) of Cr.P.C. Without previous sanction, the complaint/ charge against him for the alleged offence cannot be proceeded with the trial. The sanction of the appropriate Government or competent authority would be necessary to protect a public servant from needless harassment or prosecution. The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the honest officer. The requirement of sanction by competent authority of appropriate Government is an assurance and protection to the honest officer who does official duty to further public interest.

However, performance of public duty under colour of public duty cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime. The court to proceed further in the trial or the enquiry, as the case may be, applies its mind and records a finding that the crime and the official duty are not integrally connected.

5. The question is: when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc., can be said to have acted in discharge of his official duties? It is not the official duty of the public servant to fabricate the false record and misappropriate the public funds etc., in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc.,It does not mean that it is integrally connected or inseparably inerlinked with the crime committed in the course of same transaction, as was believed by the learned Judge, Under these circumstances, we are of the opinion that the view expressed by the High Court as well as the trial Court on the question of sanction is clearly illegal and cannot be sustained.

21. In 1999 SCC (Cri) 1031 (State of Kerala vs. V.Padmanabhan Nair), the Supreme Court held thus:
7. That apart, the contention of the respondent that for offences under Sections 406 and 409 read with Section 120-B of IPC sanction under Section 197 of the Code is a condition precedent for launching the prosecution is equally fallacious. This court has stated the correct legal position in Shreekanthiah Ramayya Munnipalli Vs.State of Bombay (AIR 1955 SC 287) and also Amrik Singh V. State of Pepsu (AIR 19 55 SC 309) that it is not every offence committed by a public servant which requires sanction for prosecution under Section 197 of the Code, nor even every act done by him while he is actually engaged in the performance of his official duties. Following the above legal position it was held in Harihar Prasad (1972 (3) SCC 89) as follows:
"As far as the offence of criminal conspiracy punishable under Section 120-B, rad with Section 409, Indian Penal Code isconcerned and also Section 5(2) of the Prevention of Corruption Act is concerned, they cannot be said to be of the nature mentioned in Section 1907 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar."
8. Learned Single Judge of the High Court declined to follow the aforesaid legal position in the present case on the sold premise that the offence under Section 406 of IPC has also been fastened against the accused besides Section 409 of IPC. We are unable to discern the rationale in the distinguishment. Sections 406 and 409 of IPC are cognate offences in which the common component is criminal breach of trust. When the offender in the offence under Section 406 is a public servant (or holding any one of the positions listed in the Section)the offence would escalate to Section 409 of the Penal Code. When this court held that in regard to the offence under Section 409 of IPC read with Section 120-B it is no part of the duty of the public servant to enter into a criminal conspiracy for committing breach of trust, we find no sense in stating that if the offence is under Section 406 read with Section 120-B IPC

it would make all the difference vis-a-vis Section 197 of the Code."

22. In 2001 SCC (Cri) 1234 (P.K.Pradhan Vs. State of Sikkim), it has been held thus:-

"5. The legislative mandate engrafted in sub section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is prohibition imposed by the Statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not mater even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation."

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15.Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of an the discharge of official duty. An official act can be performed in the discharged of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by

giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

23. In 2002 SCC (Cri) 1423, (Raj Kishore Roy Vs. Kamaleshwar Pandey and anotehr), the Supreme Court held as follows:-

"7. The law on the subject is well settled. It has been held by this court in the case of P.P.Unnikrishnan Vs. Puttiyottil Alikutty (200 0 (8) SCC 131 that under Section 197 of the Criminal Procedure Code no protection has been granted to the Public servant if the act complained of is not in connection with the discharge of his duty or in exercise of his duty.

8. In the case of P.K.Pradhan Vs. State of Sikkim (AIR 1956 SC 44) it has been held that the legislative mandate engrafted in Sub section (1) of Section 197 is a prohibition imposed by the Statute from taking cognizance. It has been held that the offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. It has been held that the only point for determination is whether the act was committed in discharge of official duty. It has been held that there must be reasonable connection between the act and the official duty. It has been held that for invoking protection under Section 197 of the Code, the acts of the accused, complained of, must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, and the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. It has been held that if the case as put forth by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is held that the question of sanction under Sec.197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. It is held that there can be cases when it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. It has been held that the claim of the accused, that the act that he did was in course of the performance of his duty, was a reasonable one and neither pretended nor fanciful can be examined during the course of trial by giving opportunity to the defence to establish it. It has been held that in such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.
9. Mr.Nagewara Rao sought to support the order of the High Court by placing reliance on the case of Matajog Dobey V. H.C.Bhari (AIR 1956 SC 44). This was a case where the investigating officers went with a search warrant, to search a place. They were o structed in performance of their duties. They had thus broken open the door of the flat and the lock of a door of a room. It was held that these were acts which were performed in the course of their duty. This finding is thus on facts of that case. In this case it has also been held that the need for sanction under Section 197 of the Criminal Procedure Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. It is held that this

question may arise at any stage of the proceedings. It is held that he question whether sanction is necessary or not may have to be determined from sage to stage. Thus, far from helping the 1st respondent, this authority also supports the proposition that in certain cases, depending on the nature o the acts complained of, the complaint cannot be quashed at the initial stage itself.

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11. In this case, as indicated above, the complaint was that the 1st respondent had falsely implicated the appellant and his brother in order to teach them a lesson for not paying anything to him. The complaint was that the 1st respondent had brought an illegal weapon and cartridges and falsely shown then to have been recovered from the appellant and his brother. The High Court was not right in saying that even if these facts are true then also the case would come within the purview of Section 197 Cr.P.C., The question whether these acts were committed and/or whether the 1st respondent acted in discharge of his duties could not have been decided in this summary fashion. This is the type of case where the prosecution must be given an opportunity to establish its case by evidence and an opportunity given to the defence to establish that he had been acting in the official course of his duty. The question whether the 1st respondent acted in the course of performance of duties and/or whether the defence is pretended or fanciful can only be examined during the course of trial. In our view, in this case the question of sanction should be left open to the decided in the main judgment which may be delivered upon conclusion of trial."

24. In the light of the judgments referred to above, now let us consider whether the acts committed by the respondent-accused are in the course of his discharge of his official duties nor not?

25. The charge against the accused is based on the statement of several witnesses to the extent that the respondent contacted Managers of Eight Nationalised Banks as mentioned earlier and either himself or through his P.A., Manickam/A-25, introduced A.1, Robin Mayne, the main accused to the Managers of the said Banks and promised the Banks that huge deposits will be given to them from the Tamil Nadu Agricultural Marketing Board which is in his control and in turn the Banks must give loans to A-1 for purchase of vehicles as and when he approach the Banks and thus a total sum of Rs.56 lakhs was taken away from all the Banks on the basis of forged R.C.Books, No Objection Certificates, and Valuation Certificates with regard to 39 vehicles. The said vehicles, most of them in North and North East India were never brought to Tamil Nadu for inspection and re-registration but bogus Valuation Certificates, R.C.Books etc., were created in the name of fictious persons after changing the number plates of the lorries for the purpose of cheating the Banks.

26. The respondent's duty as a Minister is to develop agriculture, to uplift the agriculturalists by deciding policies and plans for the said purposes. It is not the duty of a Minister to approach the banks and in his personal capacity or through his Personal Assistant to induce them to give loans to the main accused on the basis of forged R.C.Books and other valuable documents. It is not a part of the duty of a public servant to enter into a

conspiracy, fabrication of false records and misappropriation of public funds or the Banks' funds in furtherance of or in discharge of his official duties. The activities spoken to by the witnesses with regard to the commissions and omissions of this respondent are unbecoming of a public servant/Minister and by no stretch of imagination it can be said that it has got a direct nexus in discharge of his official duties. In this case it is alleged that the official capacity of the respondent has only enabled him to commit the offences by misusing his official position.

27. This court has gone through various statements of witnesses with regard to the commission of the alleged offence by this respondent and it is better not to go in depth about the evidence since the same may affect the respondent in the trial of the case. Less said, more is the better. More over, the Supreme Court time and again held that the question whether the acts which constitute an offence by the accused were committed and/or when the respondent acted in discharging of his duties could not be decided in a summary fashion. This is the type of case where the prosecution must be given an opportunity to establish its case by evidence and an opportunity given to the defence to establish that he had been acting in the official course of his duty. The question whether the respondent acted in the course of performance of his duties and/or whether the defence was pretended or fanciful could only be examined during the course of trial.

28. The conclusion reached by the Trial court that since no sanction is obtained for alleged offences committed under the Indian Penal Code as required under Section 197 of the Criminal Procedure Code, since the offences under the Prevention of Corruption Act are linked with IPC offences and though no sanction was necessary for prosecuting the accused under the Prevention of Corruption Act, still, the charges are not maintainable is not sustainable.

29. The Trial court has relied upon the judgement in R.Balakrishna Pillai Vs. State of Kerala and another reported in AIR 1996 SC 901, which has been well distinguished in the judgement in Kalicharan Mahapatra Vs. State of Orissa, reported in 1998 SCC (Cri) 1455 and the Supreme Court has held thus:-
"12. In R.Balakrishna Pillai Vs. State of Kerala (1996(1) SCC Cri.12 8) learned Chief Justice Ahmadi has referred to the Law Commission' s Report which suggested an amendment to Section 197 of the Code. The observation of the Law Commission in para 15.123 of its Report reads thus:-
(I) It appears to us that protection under the Section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbuoring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecutions. It should be left to the Government to determine from that point of view the question of the expediency or prosecuting any public servant."

Their Lordships after referring to the above Repot have observed:
"It was in pursuance of this observation that the expression `was' came to be

employed after the expression `is' to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted."

13. It must be remembered that in spite of bringing such a significant change to Section 197 of the Code in 1973, Parliament was circumspect enough not to change the wording in Section 19 of the act which deals with sanction. The reason is obvious. The action contemplated in Section 197 of the Code concerns a public servant who "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",. Whereas the offences contemplated in the PC Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the former PC act was materially imported in the new PC Act, 19 88 without any change in spite of the change made in Section 197 of the Code.

14. The result of the above discussion is thus: A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 1 9 of the Act if he continues to be a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time, the court can take cognizance of the offence without any such sanction. In other words, the public servant who committed the offence while he was a public servant,is liable to be prosecuted whether he continues in office or not at the time of trial or during the pendency of the prosecution."
30. The learned Principal Special Judge for CBI Cases relied upon the judgement of R.Balakrishna Pillai Vs. State of Kerala, which has been clearly distinguished in the subsequent judgment referred to above and therefore the order of the learned Special Judge is liable to be set aside.

31. In the result, the order dated 18.7.2001, made in Crl.M.P.No:346 of 2001 in C.C.No.22 of 1997 is set aside and the respondent, K. Kalimuthu/A-24 is directed to appear before the Trial Court on or before 16.4.2004 and face the trial.

32. Consequently, connected Crl.M.P.No:8117 of 2001 is closed.

33. There is no necessity to implead A-1 to A-22 since they are not parties to the proceedings, except N.Chandrasekaran/A-14, who has filed a separate Criminal Original Petition, which has been disposed of today by separate order. Accordingly, Crl.M.P.No:8677 of 2001 is dismissed.

Index: yes
Internet:yes

gkv

Copy to:
Principal Special Judge,

CBI Cases, Chennai