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BALBIR SINGH DELHI ADMN. DELHI

v.

D.N. KADIAN, M.M. DELHI & ANR.

D.N. KADIAN AND ORS.

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DECEMBER 10, 1985

[A.P. SEN AND B.C. RAY, JJ.]

Code of Criminal Procedure, 1973, s. 197(3) - Prosecution of member of Delhi Police Force - Prior sanction of the Government - Whether necessary and if so, when.

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A Complaint was filed by the Special Railway Magistrate against the appellants, Balbir Singh and Ram Shankar, members of Delhi Police Force, alleging that the Search Memos which were signed by the sub-Inspector Balbir Singh did not bear any signature of the witness Ram Shankar at the time when the said Search memos were in the custody of the Court and that they were interpolated subsequently by getting the same signed by the accused, Ram Shankar. The appellants contended before the Trial Court that the aforesaid complaint was not maintainable since prior sanction as required by s. 197(3) Cr.P.C. was not obtained by the complainant to prosecute them. The trial court rejected the contention and the High Court confirmed the same in appeal by the appellants. The High Court, however, held that the Notification No. F.10/77/78-HP-II dated 7th April 1980 issued by the Lt. Governor directing that the provisions of sub-s.(2) of s. 197 "shall apply to serving police officials of all ranks of Delhi Police Force" charged with the maintenance of public order, was bad in law as the Lt. Governor had no authority to issue the said Notification under sub-s.(3) of s. 197 Cr.P.C.

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Allowing Criminal Appeal No. 845/85 partly and dismissing the other appeal,

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HELD: 1(i) The Judgment and order of the High Court declaring the impugned notification dated 7th April 1980 issued by the Lt. Governor of Delhi to be ultra vires is set aside and the learned Magistrate is directed to proceed with the case in accordance with law. [817 F]

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(ii) By virtue of the Notification No. S.O.183(E) dated 20th March 1974, the President empowered the Administrator of Union Territories, i.e. Lt. Governor of Delhi to exercise the

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powers and functions of the State Government as provided in the
Code of Criminal Procedure except the powers and functions
provided in sections 8 and 477 of the said Act. The Notification
dated 7th April 1980 issued by the Lt. Governor was made in
exercise of powers conferred upon him under sub-section (3) of
Sec. 197 of the Code of Criminal Procedure read with the Govern-
ment of India Notification dated March 20, 1974 mentioned before.
Therefore, the Notification is not ultra vires the Constitution.
[815 D-E]

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2. Reading the two notifications together, it is crystal
clear that to start a proceeding against the members of all ranks
of Delhi Police Officials in a Criminal Court, previous sanction
of the Lt. Governor is imperative, provided the offence alleged
to have been committed by such members of the Delhi Police Force
has been committed while acting or purporting to act in discharge
of their official duty. [815 F]

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In the instant case, the previous sanction of the Lt.
Governor as provided in Section 197(3) Criminal Procedure Code
was, not at all necessary for initiating the proceedings against
the two appellants, since the act of tampering of the Search
Memos by them cannot be said to have been done in discharge of
their official duties inasmuch as the said Search Memos were in
the custody of the Court. [817 E-F]

Matajog Dobey v. H.C. Bhari, [1955] 2 S.C.R. 925; Pukhraj
v. State of Rajasthan & Anr., [1973] 2 S.C.C. 701; Bhagwan Prasad
Srivastava v. N.P. Misra, [1971] 1 S.C.R. 317 and Darshan Kumar v.
Sushil Kumar Malhotra & Ors., 1980 CrL. L.J. 154 relied upon.

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Bhikhaji Vaghaji v. L.K. Barot and Ors., 1982 Cr. L.J. 2014
approved.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos.
844-845 of 1985.

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From the Judgment and Order dated 1.12.1982 of the Delhi
High Court in CrL. Misc. (Main) No. 551 of 1982.

Anil Deo Singh, R.N. Poddar and P.K. Mukharjee for the
Appellants.

Anil Kumar Gupta, Amicus Curiae for the Respondents.

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The Judgment of the Court was delivered by

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B.C.RAY, J. The only question involved in these two appeals is whether the criminal proceedings initiated against the appellants, i.e. Balbir Singh Sub-Inspector and Ram Shanker, Constable of Delhi Police Force is maintainable in the absence of any prior sanction obtained from the Lt. Governor as required under s.197 (3) of the Code of Criminal Procedure.

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Section 197(1) of the Code of Criminal Procedure envisages that no court can take cognizance of any offence alleged to have been committed by a Judge or Magistrate or a public servant while acting or purporting to act in the discharge of his official duty without previous sanction of the Government. Sub-section (2) of that Section further provides that 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 discharge of his official duty, without obtaining the prior sanction of the Central Government. Sub-section (3) of the said Section further provides that the State Government may by notification direct that the provisions of Sub-section (2) shall apply, to such class or category of members of the Forces charged with the maintenance of public order as may be specified in the said order, and upon such notification being made, the provisions of Sub-section (2) will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

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The appellants are undoubtedly the members of Delhi Police Force. It is also not in dispute that these appellants do not fall within the category of officers mentioned in Sub-Section (1) of Sec. 197 of Criminal Procedure Code and as such no prior sanction of the Government is necessary in order to launch a prosecution against these officers. The only question remains to be considered is whether the appellants being members of the Delhi Police Force are entitled to get the benefit of Sub-Section (3) of Section 197 of Criminal Procedure Code by virtue of the notification No. S.O. 183(E) dated 20th March, 1974 issued by the Under Secretary of India read with the notification dated 7th April, 1980 issued by the Lt. Governor, Delhi under No.F.10/77/-78-HP-II. Delhi is a Union Territory within the meaning of Article 1 read with the First Schedule to the Constitution as amended by the Constitution (7th amendment) Act 1956. The power to administer the Union Territory is vested in the President under Article 239 of the Constitution and Clause 1 of the said Article empowers the President to administer the Union Territory through

and Administrator to be appointed by him. The Administrator appointed by the President under Art. 239(1) of the Constitution with the designation of Lt. Governor of Delhi derives only such powers, functions and duties as are entrusted to him by the President under Art. 239(1). In accordance with the provisions of this Art. 239(1) the aforesaid notification dated 20th March, 1974 has been made whereby the President had directed that the Administrators of all the Union Territories other than Arunachal Pradesh and Mizoram exercise, subject to the control of the President, the powers and discharge the functions under the Code of Criminal Procedure 1973 as mentioned in Schedule annexed thereto, subject to the condition mentioned therein. The said notification was enforced on 1st April, 1974. In this Schedule all powers and functions of the State Government except those conferred by Sections 8 and 477 of the Code were conferred on the Administrator. Therefore, by virtue of this notification, the President empowered the Administrator of Union Territories, i.e. Lt. Governor of Delhi to exercise the powers and functions of the State Government as provided in the Code of Criminal Procedure except the powers and functions provided in Sections 8 and 477 of the said Act. It also appears from the notification dated 7th April, 1980 that the Lt. Governor directed that the provisions of Sub-Section (2) of Sec. 197 "shall apply to serving police officials of all ranks of Delhi Police Force" charged with the maintenance of public order. This notification was made in exercise of powers conferred upon the administrator under Sub-Section (3) of Sec. 197 of the Code of Criminal Procedure read with the Government of India Notification Dated March 20, 1974 mentioned before. Reading these two notifications together, it is crystal clear that to start a proceeding against the members of all ranks of Delhi Police Officials in a Criminal Court, previous sanction of the Lt. Governor is imperative, provided the offence alleged to have been committed by such members of the Delhi Police Force has been committed while acting or purporting to act in discharge of their official duty.

In the instant case the act of tampering of the Search Memos by the two appellants i.e. Balbir Singh and Ram Shankar cannot be said to have been done in discharge of their official duties inasmuch as the said Search Memos were in the custody of the Court. The complaint was filed by the Special Railway Magistrate alleging that Search Memos which were signed by the Sub-Inspector Balbir Singh did not bear any signature of the witness Ram Shankar at the time when the said Search Memos were in the custody of the Court. Subsequently, it has been interpolated by getting the same signed by the accused Ram Shankar. This

- A act of tampering and interfering with the records of the Court by
the two petitioners by any stretch of imagination cannot be said
to have been done or purported to have been done by the
petitioners in discharge of their official duty. It is pertinent
to refer in this connection to the decision of this Court in
Matajog Dobey v. H.C. Bhari, [1955] 2 S.C.R. 925, where this
B Court laid down the scope of the protection afforded by Sec. 197
of the Code of Criminal Procedure in the following terms :

- "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,
C that he did it in the course of the performance of his
duty."

These observations have been followed by this Court in **Pukhraj v. State of Rajasthan & Anr.**, [1973] 2 S.C.C. 701.

- D In that case the Post Master General of Rajasthan abused and
kicked a Clerk of the Head Post Office when a clerk of the Head
Post Office of Jodhpur went to make some oral representations to
the Post Master General. The clerk filed a complaint against the
Post Master General under Sec. 323 and 504 I.P.C. before the
Additional Munsif Magistrate of Jodhpur city. An application was
filed praying that no cognizance of the offence would be taken
E without the sanction of the Government under Sec. 197 of Criminal
Procedure Code. It was held that the acts alleged were not done
in due discharge of his official duty and so no prior sanction of
the Government was necessary under Section 197 of the Code.

- In **Bhagwan Prasad Srivastava v. N.P. Misra**, [1971] 1 S.C.R.
F 317, the respondent filed a complaint alleging that the
appellant, a Civil Surgeon used defamatory and abusive words and
got him pushed out by the cook of the hospital. It was found that
the case was not covered by Sec. 197 of the said Act as those
acts were not done in discharge of his official duty.

- G In the case of **Darshan Kumar v. Sushil Kumar Malhotra & Ors.**, 1980 Cr. L.J. 154, it was found that the acts complained of
against Respondents Nos. 1,3 and 4 were purported to have been
done by them in discharge of their official duties and it was
reasonably connected with their official duties. As such it was
held that prior sanction of the State Government was necessary in
H prosecuting them in respect of the offence, if any, made out from
the commission of such acts.

As regards scope and ambit of Sec. 197(3) of the Code of Criminal Procedure it has been rightly observed by the Division Bench of the Gujarat High Court in **Bhikhaji Vaghaji v. L.K. Barot and Ors.**, 1982 Cr. L.J. 2014, that after the issuance of the notification by the Government under Sec. 197(3) of the Criminal Procedure Code directing that the provisions of Sub-Sec.(2) of Sec. 197 shall apply to the Police Officers charged with the maintenance of public order, the same could not be questioned on the ground of non-application of mind as it is within the scope and ambit of Sub-Sec. (3) of Sec. 197 of the Code. It was also observed that :

"Before the protection of sub-sec.(2) of Section 197 of the Code could be had and the proceedings are dropped on that count, the learned Magistrate is under an obligation to decide that the alleged acts attributed to the members of the police force are acts done in the discharge of their official duties, or at any rate, they purport to be, or bear the colour or semblance of, the acts that could be done in the discharge of their official duties."

We have already said that the alleged acts of tampering the Search Memo while the same was in custody of the Court cannot be deemed to be an act purported to have been done by these two appellants in discharge of their official duties. Therefore, the previous sanction of the Lt. Governor as provided in Section 197(3) Criminal Procedure Code was, in our considered opinion, not at all necessary for initiating the proceedings against these two appellants, who are members of the Delhi Police Force. For the reasons stated hereinbefore the Appeal filed by the Delhi Administration succeeds and is allowed and the Appeal filed by the accused is dismissed. The Judgment and Order of the High Court declaring the impugned notification dated 7th April, 1980 issued by the Lt. Governor of Delhi to be ultra vires is set aside and the learned Magistrate is directed to proceed with the case in accordance with law.

We are thankful to Sri Anil Kumar Gupta for the assistance he has rendered as Amicus Curiae.

M.L.A.

Criminal Appeal 844/85 dismissed.
Criminal Appeal 845/85 partly allowed.