K. KALIMUTHU

v.

STATE BY D.S.P.

MARCH 30, 2005

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Code of Criminal Procedure, 1973 :

Section 197—Protection under—Scope and ambit of—Sanction for prosecution of public servant—Held: Protection to public servant under Section 197 is available if the act or omission for which he was charged had reasonable connection with the discharge of his official duty—Question relating to sanction, need not necessarily be considered as soon as complaint is filed and may be determined at a later stage of proceeding.

Section 197—Applicability of—Discussed.

Words and phrases :

Cognizance—Meaning of.

"Official" and "official duty"—Meaning of—In the context of Section 197 of Code of Criminal Procedure, 1973.

Charge sheet was filed against appellant, a public servant for various penal offences. Special Judge found that the cognizance of offence could not be taken in the absence of requisite sanction contemplated under Section 197 CrPC. In revision filed by State, High Court held that the person claiming protection under section 197 has to show that there is a reasonable connection between the act complained of and the discharge of official duty and having failed to show the same, appellant is not entitled to protection under section 197 CrPC. Aggrieved appellants filed the present appeals.

Disposing of the appeals, the Court

HELD : 1. The purpose of Section 197 CrPC is to afford adequate protection to public servants to ensure that they are not prosecuted for

A anything done by them in the discharge of their official duties. 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. 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 B 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. 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. If the omission or neglect on the part of the C public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. Thus, the concept of Section 197 does not get immediately attracted on institution of the D complaint case. [5-F-G, H; 6-A, B, C-D]

Bakhshish Singh Brar v. *Smt. Gurmej Kaur and Anr.*, AIR (1988) SC 257 and *P. Arulswami* v. *State of Madras,* AIR (1967) SC 776, referred to.

2. The mandatory character of the protection afforded to a public E servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' shows that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. A court, therefore, is precluded from entertaining F a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty. [8-A-C]

3. Use of the expression, 'official duty' implies that the act or omission must have been done by the public servant in the course of his service and G that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. The Section has, thus, to be construed strictly, while determining its H applicability to any act or omission in course of service. Once it is

established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. Therefore, if it is *prima facie* found that the act or omission for which the appellant was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed. [8-H; 9A, B-D, H]

Matajog Dobey **v.** *H.C. Bhari,* **AIR (1956) SC 44, relied on.**

B. Saha and Ors. **v.** *M.S. Kochar,* **[1979] 4 SCC 177;** *State of H.P.* **v.** *M.P. Gupta,* **[2004] 2 SCC 349;** *State of Orissa through Kumar Raghvendra Singh and Ors.* **v.** *Ganesh Chandra jew,* **JT (2004) 4 SC 52; Shri** *S.K. Zutshi and Anr.* **v.** *Shri Bimal Debnath and Anr.,* **JT (2004) 6 SC 323 and** *P.K. Pradhan* **v.** *State of Sikkim,* **[2001] 6 SCC 704, referred to.**

4. The question relating to the need of sanction under Section 197 of the Code is not necessarily be considered as soon as the complaint is lodged and on the allegations contained therein. The question may arise at any stage of the proceeding. [10-G]

CRIMINAL APELLATE JURISDICTION : Criminal Appeal No. 469 of 2005.

From the Judgment and Order dated 31.3.2004 of the Madras High Court in Crl. R.C. No. 1215 of 2001.

K.V. Viswanathan, K.V. Venkataraman, Atul Kumar Sinha B. Raghunath and K.V. Vijayakumar for the Appellant in Crl. A. No. 469/2005.

M.N. Rao, S. Thananjayan with him for the Appellant in Crl. A. Nos. 470/2005 and 471/2005.

P.P. Malhotra, Additional Solicitor General A.D.N. Rao and P. Parmeswaran with him for the Respondent.

The Judgment of the Court was delivered:

ARIJIT PASAYAT, J. Leave granted.

A 1. All these appeals involve identical question of law and are, therefore, taken up together. In each of these cases, on the allegation that the appellant was guilty of various offences under the Indian Penal Code, 1860 (in short the 'IPC') and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 (in short the 'Act'), information was lodged, investigation was undertaken and on completion of investigation, charge sheet was filed. B The appellant in each case filed petition before the Principal Special Judge for CBI cases, Chennai, contending that in the absence of requisite sanction under Section 197 of the Code of Criminal Procedure, 1973 (in short the 'Code') it was beyond jurisdiction of the Court to take cognizance of the alleged offences. The stand taken in the petitions was that the alleged acts C were directly and reasonably connected with official duty and since there was a direct nexus and relationship between the discharge of his alleged act and the official duties and because of the absence of requisite sanction as contemplated under Section 197 of the Code, cognizance could not have been taken. The plea found favour with the concerned court in the matter of K. Kalimuthu. The State questioned correctness of the judgment by filing D revision taking the stand that Section 197 of the Code has no application to the facts of the case. The plea was accepted by the High Court, which is the subject matter of challenge in the appeal relatable to SLP (Crl.) No. 1770/ 2004. But the plea was not accepted by the concerned court in the other two cases to which the appeals arise out of SLP (Crl.) Nos. 2926/2004 and 681/ E 2005. In these cases High Court rejected the plea raised by the concerned appellants about protections available under Section 197 of the Code.

2. In all the three cases the High Court took the view that the person claiming protection under Section 197 of the Code has to show that there is a reasonable connection between the act complained of and the discharge of F official duty. Accordingly, the order passed by the Special Judge for CBI cases, in favour of accused-appellant in the appeal relating to SLP(Crl.) No. 1770/2004, was set aside and in other two cases view adopted by the Special Judge for CBI cases was maintained and the applications filed by the appellants - S. Chandramohan and N. Chandrasekaran were dismissed.

G 3. In support of the appeals, learned counsel for the appellants submitted that the High Court failed to notice the true scope and ambit of Section 197 of the Code. There was unmistakable link between the act alleged and the official duties and, therefore, Section 197 of the Code was clearly applicable.

H 4. In response, Mr. P.P. Malhotra, learned Additional Solicitor General

for the prosecution took the stand that the High Court kept in view the law as laid down by this Court in various cases and rightly held that the protection under Section 197 of the Code was not available to the accused persons.

5. The pivotal issue i.e. applicability of Section 197 of the Code needs careful consideration. In *Bakhshish Singh Brar* v. *Smt. Gurmej Kaur and Anr.*, AIR (1988) SC 257, this Court while emphasizing on the balance between protection to the officers and the protection to the citizens observed as follows:-

> "It is necessary to protect the public servants in the discharge of their duties. In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that Section 196 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence."

6. 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 from 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

A 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. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

7. At this juncture, we may refer to *P. Arulswami* v. *State of Madras,* AIR (1967) SC 776, wherein this Court held as under :

> "'. It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure 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. It is 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. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is 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." A

8. Section 197(1) and (2) of the Code reads as under :

"197. (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 B been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction :-

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

D

* * *

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

9. The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance no prosecution can be initiated in a Court of Sessions under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence F unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his knowledge that such offence has G been committed. So far public servants are concerned the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect H

A in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint, cannot be B taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means 'taking notice of'. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused C of an offence alleged to have committed during discharge of his official duty.

10. Such being the nature of the provision the question is how should the expression, 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', be understood? What does it mean? 'Official' according to dictionary, means pertaining to an D office, and official act or official duty means an act or duty done by an officer in his official capacity. In *B. Saha and Ors.* v. *M. S. Kochar,* [1979] 4 SCC 177, it was held : (SCC pp. 184-85, para 17)

> "The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' E employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting F an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197 (1), an Act constituting an G offence, directly and reasonably connected with his official duty will require sanction for prosecution and the said provision."

11. Use of the expression, 'official duty' implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The Section does not extend H its protective cover to every act or omission done by a public servant in

service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. A

12. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in *Matajog Dobey* v. *H. C. Bhari,* AIR (1956) SC 44 thus : B C D E F

> "The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty '. 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 (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty." G

13. If on facts, therefore, it is *prima facie* found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to official to which applicability of Section 197 of the Code cannot be disputed. H

14. The above position was highlighted in *State of H.P.* v. *M.P. Gupta,* [2004] 2 SCC 349, *State of Orissa through Kumar Raghvendra Singh and Ors.* v. *Ganesh Chandra jew,* JT (2004) 4 SC 52 and in *Shri S.K. Zutshi and Anr.* v. *Shri Bimal Debnath and Anr.,* JT (2004) 6 SC 323.

15. In *P.K. Pradhan* v. *State of Sikkim,* [2001] 6 SCC 704 it has, *inter alia,* held as follows :

> "The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of 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 matter 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 I excess of the needs and requirements of the situation."

16. The question relating to the need of sanction under Section 197 of the Code is not necessarily be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. Further, in cases where offences under the Act are concerned the effect of Section 19, dealing with question

of prejudice has also to be noted. A

17. Therefore, we do not find any infirmity in the judgment of the High Court declining to consider the applicability of Section 197 of the Code at the present juncture. It is open to the appellant to raise that question if occasion so arises at an appropriate stage during trial. We make it clear that we have not expressed any opinion as regards the applicability or otherwise of Section B 197. Certain observations have been made by the High Court while deciding the question regarding the applicability of Section 197 of the Code. These appear to have been made for the purpose of deciding the issue as it stands at present. If a plea relating to applicability of Section 197 is raised subsequently the concerned Court would not be bound by the observations C made, while deciding such issue, except on the legal principles noticed by the High Court on the basis of decisions of this Court. As the matter is pending since long the concerned courts do well to complete the trial as expeditiously as possible.

The appeals are accordingly disposed of. D

D.G. Appeal disposed of.