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OM KR. DHANKAR

v.

STATE OF HARYANA & ANR.
(Criminal Appeal No. 464 of 2012)

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FEBRUARY 28, 2012

[R.M. LODHA AND H. L. GOKHALE, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

C s.397 - *Revision - Order of Magistrate directing issuance of summons - Held: Is open to challenge under the revisional jurisdiction.*

D s.197 - *Prosecution of public servant - Requirement of previous sanction - Held: offence of cheating u/s 420 IPC cannot be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty - Therefore, sanction of competent authority u/s 197 CrPC was not required - Trial court shall proceed as per the summoning order - Penal Code, 1860 - ss.420, 406 and 161.*

E The appellant, a transporter, filed a criminal complaint against respondent no. 2 alleging that the latter with mala fide intention issued directions to the Inspector not to accept passengers tax at tax collection points; that when

F three of the buses of the appellant were impounded and he visited the office of respondent no. 2, the latter told him that he had not paid Rs. 2 lakhs which was due towards the passengers tax and asked him to deposit the amount at his residence. The appellant paid the amount to respondent no. 2 at his residence and the buses were released. The appellant alleged that respondent no. 2 cheated him, embezzled the public money and also received illegal gratification. The trial court held that sufficient grounds existed to proceed against respondent

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no. 2 to be summoned to stand trial for offences punishable u/ss 420, 406 and 161 IPC. Respondent no. 2 challenged the summoning order by filing a criminal revision which was allowed by the Addl. Sessions Judge holding that in the absence of sanction by competent authority the summoning order could not have been issued. The High Court dismissed the criminal revision filed by the appellant.

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In the instant appeal filed by the complainant, the questions for considerations before the Court were: (i) whether the criminal revision petition against the order of summoning is maintainable, and (ii) whether in the facts and circumstances of the case, the sanction u/s 197 of the Code of Criminal Procedure was required.

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HELD: 1. The revisional jurisdiction u/s 397 Cr.P.C. was available to respondent No. 2 in challenging the order of the Magistrate directing issuance of summons. [para 10] [1166-A]

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Rajendra Kumar Sitaram Pande and Others Vs. Uttam and Another 1999 (1) SCR 580 = 1999 (3) SCC 134 ; *Madhu Limaye Vs. State of Maharashtra* 1978 (1) SCR 749 = 1977 (4) SCC 551; *V.C. Shukla Vs. State* 1980 SCR 380 = 1980 Suppl. SCC 92; *Amar Nath Vs. State of Haryana* 1978 (1) SCR 222 = 1977 (4) SCC 137; *K.M. Mathew Vs. State of Kerala* 1991 (2) Suppl. SCR 364 = 1992 (1) SCC 217 - relied on.

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Rakesh Kumar Mishra Vs. State of Bihar 2006 (1) SCR 124 = 2006 (1) SCC 557 - held inapplicable.

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2. In the case of *Prakash Singh Badal*, this Court has held that the offence of cheating u/s 420 IPC or for that matter offences relateable to ss. 467, 468, 471 and

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- A 120-B IPC 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 view of the legal position, the Additional Sessions Judge and the High Court were not right in holding that for prosecuting respondent No. 2 for the offences for which the summoning order has been issued, the sanction of the competent authority u/s 197 Cr.P.C. was required. [para 13-14] [1166-E-F; 1167-D-E]
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- C *Prakash Singh Badal and Another Vs. State of Punjab and Others* 2006 (10) Suppl. SCR 197 = 2007 (1) SCC 1 - relied on.

- 2.2 The orders of the High Court and the Additional Sessions Judge are set aside. The order passed by the
- D Judicial Magistrate in the criminal complaint is restored. The trial court shall proceed against respondent No. 2 as per the summoning order. [para 15] [1167-F-G]

Case Law Reference:

- E 1999 (1) SCR 580 relied on para 9
- 1978 (1) SCR 749 relied on para 9
- 1980 SCR 380 relied on para 9
- F 1978 (1) SCR 222 relied on para 9
- 1991 (2) Suppl. SCR 364 relied on para 9
- 2006 (1) SCR 124 held inapplicable para 10
- G 2006 (10) Suppl. SCR 197 relied on para 13
- CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 464 of 2012.
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- From the Judgment & Order dated 17.05.2007 of the High Court of Judicature of Punjab & Haryana at Chandigarh in Criminal Revision Petition No. 1583 of 2002.

Dr. Sushil Balwada for the Appellant.

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Anis Ahmed Khan, Shoaib Ahmad Khan, S.P. Singh, Chowdhari, Ramesh Kumar, Kamal Mohan Gupta for the Respondent.

The Judgment of the Court was delivered by

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R.M. LODHA, J. 1. Leave granted.

2. The complainant is in appeal, by special leave, aggrieved by the order dated May 17, 2007 of the High Court of Punjab and Haryana whereby the single Judge of that Court dismissed the Criminal Revision Petition filed by the appellant and affirmed the order dated February 1, 2002 passed by the Additional Sessions Judge, Gurgaon. The Additional Sessions Judge by his order allowed the Criminal Revision filed by the present respondent No. 2 and quashed the order dated June 2, 2001 passed by the Judicial Magistrate, First Class, Gurgaon, summoning him to face trial under Sections 420, 406 and 161 of the Indian Penal Code (IPC).

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3. The appellant (hereinafter referred to as 'the complainant') filed a criminal complaint against the respondent No. 2 in the court of duty Magistrate, Gurgaon. In his complaint, the complainant stated that he was a transporter and operating buses on the contract basis in the name of M/s Chaudhary Bus Service. On May 1, 2000, his two buses bearing registration Nos. DL-1P-7077 and DL-1PA-3927 were impounded. On that date, the third bus bearing registration No. DL-1PA-4007 belonging to the complainant was also impounded. The respondent No. 2 at the relevant time was working as Deputy Excise and Taxation Commissioner, Gurgaon. The complainant visited his office and enquired about the impounding of his three buses. He was told that he (complainant) had not paid the passenger taxes in respect of these three buses. The respondent No. 2 told the complainant that Rs. 2 Lakhs were due towards the passenger taxes in relation to these three

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- A buses and asked the complainant to deposit that amount at his residence if he wanted the buses to be released. The complainant arranged Rs. 1,50,000/- and paid this amount to respondent No. 2 at his residence at about 1.45 p.m. on May 1, 2000. The respondent No. 2, according to the complainant,
- B promised him to issue receipts from the office. The complainant visited the office of the accused at about 4 p.m., but there was no one in the office except one office clerk who told him that two buses have been released and the third bus would be released on payment of Rs. 50,000/- at the residence
- C of the respondent No. 2. The complainant paid Rs. 50,000/- at about 9.30 p.m. at the residence of the respondent No. 2 and the third bus was also released. In the complaint, the complainant alleged that the respondent No. 2 had cheated him and the public money has been embezzled and the accused
- D also received illegal gratification; the intention of the respondent No. 2 was mala fide while issuing directions to Inspector posted at different tax collection points not to accept passengers tax at tax collection points. It was thus alleged that the accused had committed offences under Sections 420, 409 and 427 IPC and Section 13(1)(d) of the Prevention of Corruption Act, 1988.
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4. The complainant appeared before the Magistrate in support of his complaint and examined himself. Two other witnesses were also examined on his behalf. Certain documents were also placed before the Magistrate.

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- 5. The Magistrate vide order dated June 2, 2001 found that sufficient grounds existed to proceed against respondent No. 2 to be summoned to stand trial under Sections 420, 406 and 161 IPC.
- G 6. The respondent No. 2 challenged the summoning order in Criminal Revision before the Sessions Judge, Gurgaon which was finally heard and disposed of by the Additional Sessions Judge, Gurgaon on February 1, 2002. The Additional Sessions Judge, *inter alia*, held that in the absence of sanction
- H by the competent authority, the summoning order could not

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have been issued. The Additional Sessions Judge, accordingly, vide order dated February 1, 2002 set aside the summoning order. A

7. As noted above, the complainant challenged the order of the Additional Sessions Judge before the High Court but was not successful there. B

8. The counsel for the appellant is not present. However, from the special leave petition, it transpires that two questions have been raised, namely, (one) whether Criminal Revision Petition against the order of summoning is maintainable, and (two) whether in the facts and circumstances of the present case, the sanction under Section 197 of the Code of Criminal Procedure (Cr.P.C.) is required. C

9. Insofar as the first question is concerned, it is concluded by a later decision of this Court in the case of *Rajendra Kumar Sitaram Pande and Others Vs. Uttam and Another*¹. In *Rajendra Kumar Sitaram Pande* case (supra) this Court considered earlier decisions of this Court in the cases of *Madhu Limaye Vs. State of Maharashtra*², *V.C. Shukla Vs. State*³, *Amar Nath Vs. State of Haryana*⁴ and *K.M. Mathew Vs. State of Kerala*⁵ and it was held as under :- E

"6... This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same...." F

1. (1999) 3 SCC 134.
2. (1977) 4 SCC 551.
3. 1980 Supp SCC 92.
4. (1977) 4 SCC 137.
5. (1992) 1 SCC .

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A 10. In view of the above legal position, we hold, as it must be, that revisional jurisdiction under Section 397 Cr.P.C. was available to the respondent No. 2 in challenging the order of the Magistrate directing issuance of summons. The first question is answered against the appellant accordingly.

B 11. The second question, is whether sanction under Section 197 Cr.P.C. is mandatorily required for the prosecution of respondent No. 2 for the offences under Sections 420, 406 and 161 IPC as he happened to be Deputy Excise and Taxation Commissioner at the time of incident.

C 12. Mr. Anis Ahmed Khan, learned counsel for the respondent No. 2, heavily relied upon the decision of this Court in *Rakesh Kumar Mishra Vs. State of Bihar*⁶ while supporting the view of the High Court.

D 13. In our view, the controversy with regard to the second question is concluded by the decision of this Court in *Prakash Singh Badal and Another Vs. State of Punjab and Others*⁷. *Rakesh Kumar Mishra* case (supra) was considered in *Prakash Singh Badal* case (supra) in para 49 of the report.

E This Court thus held that the offence of cheating under Section 420 or for that matter offences relateable 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. This Court stated in paragraphs 49 and 50 of the report thus:

G "49. Great emphasis has been laid on certain decisions of this Court to show that even in relation to the offences punishable under Sections 467 and 468 sanction is necessary. The foundation of the position has reference to some offences in *Rakesh Kumar Mishra* case. That decision has no relevance because ultimately this Court

6. (2006) 1 SCC 557.

H 7. (2007) 1 SCC 1.

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has held that the absence of search warrant was intricately (sic linked) with the making of search and the allegations about alleged offences had their matrix on the absence of search warrant and other circumstances had a determinative role in the issue. A decision is an authority for what it actually decides. Reference to a particular sentence in the context of the factual scenario cannot be read out of context.

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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."

14. In view of the above legal position, the Additional Sessions Judge and the High Court were not right in holding that for prosecuting the respondent No. 2 for the offences for which the summoning order has been issued, the sanction of the competent authority under Section 197 Cr.P.C. is required. The view of the Additional Sessions Judge and the High Court is bad in law being contrary to the law laid down by this Court in *Prakash Singh Badal* case (supra). The second question is answered in the negative and in favour of the appellant.

15. As a result of the above discussion, the Appeal is allowed. The order dated May 17, 2007 of the Punjab and Haryana High Court and the order dated February 1, 2002 of the Additional Sessions Judge, Gurgaon are set aside. The order dated June 2, 2001 passed by the Judicial Magistrate, First Class, Gurgaon in the criminal complaint filed by the present appellant is restored. Trial court shall now proceed against the respondent No. 2 as per the summoning order.

R.P.

Appeal allowed.

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