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S. K. MIGLANI

v.

STATE NCT OF DELHI

(Criminal Appeal No.744 of 2019)

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APRIL 30, 2019

**[ASHOK BHUSHAN AND K. M. JOSEPH, JJ.]**

*Code of Criminal Procedure, 1973:*

C *ss. 197 and 482 – Employee of Nationalized Bank charged u/ss. 201, 409, 419, 420, 467, 468, 471, 120-B of IPC – Application by accused seeking his discharge on the ground of non-compliance of s. 197 i.e. failure to seek sanction for his prosecution – Application dismissed by Chief Metropolitan Magistrate (CMM) – Upheld by High Court in petition u/s. 482 – On appeal, held:*  
D *Employee, being not a public servant removable from his office saved by or with the sanction of the Government, s. 197 was not applicable – However, it was not correct for the CMM to make observation that the employee had committed forgery, at the stage when he was considering question of applicability of s. 197 – The Magistrate, at any stage, prior to the final trial, is to avoid any*  
E *conclusive opinion regarding any evidence collected during investigation – However, such evidence can be looked into to form an opinion as to whether prima facie case is made out against the accused – Criminal Trial – Evidence.*

**Partly allowing the appeal, the Court**

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**HELD: 1.**The appellant being not a public servant removable from his office saved by or with the sanction of the Government, sanction under Section 197 Cr.P.C. was not applicable. The appellant cannot claim protection under Section 197 Cr.P.C. At the stage, when Court is considering the question  
G regarding applicability of Section 197 Cr.P.C., it was not necessary for the CMM to make observation that appellant has done an act of forgery. The FSL report was one of the evidences collected by I.O. Its evidentiary value was still to be gone into at the time of trial in the light of the evidences, which may come before the trial court. [Paras 11 and 13][1167-F-G; 1168-B]

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*K.CH. Prasad v. Smt. J. Vanalatha Devi and Others* (1987) 2 SCC 52 : [1987] 2 SCR 216 – relied on. A

2. The observation made by CMM by giving opinion using the expression that appellant has committed forgery ought to have been avoided. The Magistrate, at any stage prior to final trial, is to avoid any conclusive opinion regarding any evidence collected during investigation. It is true that evidence collected in the investigation can be looked into to form an opinion as to whether prima facie charge is made out against an accused and what is the nature of offence alleged against him. [Para 15] [1169-B-C] B

*S.P.S. Rathore v. Central Bureau of Investigation and Another* (2017) 5 SCC 817 : [2016] 5 SCR 335 – referred to. C

3. Therefore, the court upholds the order of the CMM dated 03.12.2014 rejecting the application under Section 197 Cr.P.C. on the ground that appellant was not removable by his office saved by or with the sanction of the Government, is upheld. But the observations made by CMM in its order, as regards Commission of forgery against the accused, are deleted. [Paras 19 and 20][1170-F; 1171-A] D

*Parkash Singh Badal and Another v. State of Punjab and Others* (2007) 1 SCC 1 : [2006] 10 Suppl. SCR 197; *Inspector of Police and Another v. Battenapatla Venkata Ratnam and Another* (2015) 13 SCC 87; *Devinder Singh and Others v. State of Punjab* (2016) 12 SCC 87 : [2016] 6 SCR 295 ; *N. K. Ganguly v. Central Bureau of Investigation* (2016) 2 SCC 143 : [2015] 10 SCR 192 – relied on. E

<u>Case Law Reference</u>			
[2006] 10 Suppl. SCR 197	relied on	Para 4	
[1987] 2 SCR 216	relied on	Para 10	G
[2016] 5 SCR 335	referred to	Para 14	
(2015) 13 SCC 87	relied on	Para 16	
[2016] 6 SCR 295	relied on	Para 16	
[2015] 10 SCR 192	relied on	Para 17	H

A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal  
No.744 of 2019

From the Judgment and Order dated 06.08.2018 of the High Court  
of Delhi at New Delhi in CrI. M.C. No.572 of 2015

B Ajayinder Sangwan, Rajkumar Sharma, V.P. Singh, T.P. Singh,  
Sachin Choudhary, Summinder Paswan, Pradeep Kumar Shrama,  
Amuridh Kumar, Devendra Singh, Advs. for the Appellant.

V. Balaji, Nachiketa Joshi, Praneet Pranav, B.V. Balaram Das,  
Advs. for the Respondent.

C The Judgment of the Court was delivered by

D **ASHOK BHUSHAN, J.** 1. This appeal has been filed against  
the judgment of Delhi High Court dated 06.08.2018 dismissing the  
application filed by the appellant under Section 482 Cr.P.C. praying for  
setting aside the order dated 03.12.2014 and 13.12.2014 passed by Chief  
Metropolitan Magistrate, Saket Court, New Delhi and further to quash  
the F.I.R. No. 432 of 2000 under Sections 201, 409, 419, 420, 467, 468,  
471, 120-B I.P.C. and the charge sheet.

2. The brief facts of the case necessary to be noted are:-

E 2.1 The appellant has been working at the relevant time as  
Manager in Bank of Baroda, Faridabad Branch. Mr. Anant  
Chatterjee, Director, Housing gave written complaint dated  
14.11.2000. On said basis a FIR No. 432 of 2000 dated  
15.11.2000 was lodged at PS Kotla Mubarakpur for offence  
under Section 201, 409, 419, 420, 467, 468, 471, 120-B IPC.  
F It was the case of the prosecution that Mehender Kumar  
(Accountant), H.R. Sharma (Senior Account Officer), S.C.  
Chugh (Asstt. Director Housing), V.D. Nanda (Ht. FA (H)  
in collusion with other DDA employees M.L. Ahuja and  
Asha Gupta and property dealer S.K. Khanna and S.K. Goel  
and SPA holder of original allottee Praveen Kumar illegally  
G acted on fake request of original allottee Mr. Gautam Dhar  
for cost reduction of flat from 10.66 lakhs to 7.77 lakhs with  
approval of competent authority and found that the original  
FDR and refund application dated 07.07.1994 was removed/  
misplaced from the DDA file. The F.I.R., however, alleged  
H that refund cheque of Rs.2,22,263/- was withdrawn by

opening a saving bank account No.33604 in Bank of Baroda, Faridabad with forged signature of the allottee. A

- 2.2 After investigation, a charge sheet was submitted against the DDA officials, property dealers and Special Power of Attorney Praveen Kumar. A supplementary charge sheet was also filed, in which the appellant's name was included. In the supplementary charge sheet, it is mentioned that the appellant opened a fictitious savings bank account No.33604 in the name of Gautam Dhar in connivance with Praveen Kumar, attorney of Shri Gautam Dhar and Shri Rajinder s/o Shri Braham Pal in order to encash the cheque dated 07.01.2000 for Rs.2,22,263/-. The supplementary charge sheet further stated that prosecution sanction under Section 197 Cr.P.C. has been obtained against DDA officials. Investigation agency also obtained report dated 30.12.2002 from Forensic Science Laboratory regarding handwriting on various documents. Handwriting opinion was also obtained with regard to signatures on account opening form of Gautam Dhar with the signature of the appellant. B C D
- 2.3 An application dated 09.05.2012 was filed by the appellant before the ACMM, Saket Court, New Delhi in FIR No.432 of 2000 stating that appellant is a public servant employed with a nationalized bank as a Manager and it is mandatory to seek prosecution sanction against the appellant in terms of Section 197 Cr.P.C. It was stated that prosecution has not sought prosecution sanction against the appellant-accused, hence he may be discharged on account of non-compliance of Section 197 Cr.P.C. The Chief Metropolitan Magistrate (South), Saket Court passed an order on 03.12.2004 rejecting the application of the appellant seeking discharge for want of sanction. Case was fixed for framing of charge on 13.12.2014. On 13.12.2014, charge was framed against the appellant under Section 465/120-B I.P.C. following charge was framed against the appellant on 13.12.2014:- E F G

“CHARGE

I, Vivek Kumar Gulia, Chief Metropolitan, Magistrate (South), Saket Courts Complex, New Delhi do hereby charge

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A you accused S.K. Mighlani son of Sh. Lal Chand Mighlani as under :

B That you, in 1996 and afterwards, at DDA, INA, Vikas Sadan, New Delhi and other places, alongwith co-accused Mahender Kumar, H.R. Sharma, S.C. Chugh, V.D. Nanda, Praveen Kumar, S.K. Khanna, S.K. Goel. M.L. Ahuja and Asha Gupta, agreed to commit criminal breach of trust with DDA, pursuant to which forged letters for depositing challans, application for change of address, related affidavit, application for reduction of cost bearing forged signature of allottee Sh. Gautam Dhar and forged seal of Notary were entertained and further the cheque issued in the name of allottee was encashed through forged account opened by you and thereby committed an offence punishable U/s. 120-B IPC and within the cognizance of this Court;

D Secondly, that you, at Bank of Baroda, Faridabad Branch, Haryana, forged the account opening form in the name of allottee Sh. Gautam Dhar (account no. 33604) with intention to get the refund cheques encashed and thereby committed an offence punishable U/s. 465 IPC and within the cognizance of this Court.

E I hereby direct you to be tried by this court for the aforesaid charges.

CMM(South) Saket Courts  
New Delhi/13.12.2014

F The charge is read over and explained to the accused in vernacular language and he is questioned as under:

Ques.: Do you plead guilty or claim trial ?

Ans. I plead not guilty and claim trial.”

G 2.4 An application under Section 482 Cr.P.C. was filed by the appellant before the High court of Delhi, where following prayers have been made:-

H i. Set aside the order dated 03.12.2014 passed by Sh. V.K. Gulia, Ld. CMM, Saket Courts, New Delhi dismissing the discharge application of the petitioner;

- ii. Set aside the order dated 13.12.2014 passed by Sh. V.K. Gulia, Ld. CMM, Saket Courts, New Delhi, thereby framing charges against the petitioner by taking cognizance without obtaining sanction for prosecution as required U/s. 197 Cr.P.C. in the interest of justice; A
  - iii. Quash the FIR No.432/2000, U/s. 406/201/419/420/467/468/471/120B IPC registered at PS: Kotla Mubarakpur, Delhi, Charge-sheet U/s. 406/201/419/420/467/468/471/120B IPC and further proceeding emanating therefrom qua the petitioner; B
  - iv. Pass any such or further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice." C
- 2.5 The High Court vide the impugned judgment dismissed the application filed under Section 482 Cr.P.C. upholding the order of CMM dated 13.12.2014. Aggrieved against the said judgment, this appeal has been filed. D

3. Learned counsel for the appellant in support of this appeal submits that the appellant, who was working as a Branch Manager in Bank of Baroda had permitted opening of a savings account No.33604 in discharge of his official duty. The appellant being a public servant, sanction ought to have been obtained under Section 197 Cr.P.C. for prosecuting the appellant. It is submitted that although sanction has been obtained with regard to DDA officials, but no sanction has been obtained for the appellant. He submits that CMM committed error in rejecting the application of the appellant for discharge due to want of sanction. It is further submitted that the appellant's name came only in the supplementary charge sheet and allegations are only with regard to opening of a savings bank account. Investigation Agency has obtained opinion of handwriting experts with respect to signatures of Gautam Dhar on the account opening form and the specimen signatures of the appellant. It is submitted that in the report dated 30.12.2002, which was received from Forensic Science Laboratory, Govt. of NCT of Delhi with regard to signatures of Gautam Dhar on the account opening form and with the specimen signatures of the appellant, it has been mentioned in the report that it has not been possible to express a definite opinion on rest of the items on the basis of materials at hand. It is submitted that

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- A although the said report was very much with the I.O., another report was called for from the Chief Forensic Scientist & Director (FS) to seek further opinion from GEQD, Shimla. It is submitted that the report has been submitted by letter dated 29.10.2003 opining that the signatures of Gautam Dhar in the account opening form tallies with the specimen signatures of the appellant. He submits that the subsequent report, which
- B was sent by letter dated 29.10.2003 could not have been relied, since in the signature of Gautam Dhar in the account opening form and signatures of the appellant there is no similarity. It is further submitted that in any view of the matter, opinion of a handwriting expert is only an opinion evidence, which is a weak nature of evidence and could not have been
- C relied in rejecting the claim of the appellant that he has opened the account in exercise of his official duty. It is further submitted that the CMM in his order dated 03.12.2014 has held that forgery has been committed by the appellant in sanctioning the account opening form. It is submitted that appellant has been held guilty before even trial has proceeded.
- D 4. Learned counsel for the respondent refuting the submission of the appellant contends that appellant cannot claim benefit of Section 197 Cr.P.C., since the allegations against him are allegations of forgery, which allegations cannot be held to be performed in exercise of official duty. It has been submitted that this Court has held in **Parkash Singh Badal and Another Vs. State of Punjab and Others, (2007) 1 SCC 1** that
- E the offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120B 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.
- F 5. Learned counsel for the State submits that the application of the appellant has been rightly rejected by the CMM.
6. We have considered the submissions of the learned counsel for the parties and have perused the records.
- G 7. The CMM in his order dated 03.12.2014 while rejecting the application of the appellant for discharge for want of sanction under Section 197 Cr.P.C. has relied on the judgment of this Court in **Parkash Singh Badal (supra)**. With regard to the appellant, following order was passed by CMM:-
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“Accused S.K. Mighlani pressed his application for discharge for want of sanction u/s 197 Cr.P.C. It was argued that he had opened account as per the procedure prescribed and since this act was done in discharge of his duties, the cognizance should not have been taken against him in absence of section 197 Cr.P.C. From the FSL report, it is clear that accused S.K. Mighlani forged the signatures of Sh. Gautam Dhar on account opening form and moreover, the introducer Rajender Kr. is absconding. In view of this Court, an act of forgery done by public servant cannot be considered an act done in discharge of his official duties. In this regard, reliance can be placed on the decision given by the Apex Court in the case of Parkash Singh Badal & Another vs. State of Punjab & Others {(2007) 1 SCC 1}, wherein it was laid down that:

*“.....The offence of cheating under Section 420 or for that matter offences relating to Sections 467, 468, 471 and 120B 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”.*

Otherwise also, when accused pleads sanction in bar, the onus is on him to prove its necessity, but the accused has not satisfied this Court that Section 197 Cr.P.C applies in this case because at the relevant time he was public servant not removable from his office saved by or with the sanction of the Government.”

8. One of the reasons given by CMM is that accused has not satisfied the Court that Section 197 Cr.P.C. applies in this case because at the relevant time, he was public servant not removable from his office saved by or with the sanction of the Government. Section 197 Cr.P.C. provides:-

**“197. Prosecution of Judges and public servants.—(1)** When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge



A of his official duty, no Court shall take cognizance of such offence except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]-

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

C (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 Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression “State Government” occurring therein, the expression “Central Government” were substituted.

E **Explanation** — For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code (45 of 1860).”

F XXXXXXXXXXXXXXXXXXXXXXXX”

G 9. The appellant being Manager in nationalized bank whether can claim that before prosecuting him sanction is required under Section 197. The CMM having come to opinion that appellant having not satisfied that he was public servant not removable from his office saved by or with the sanction of the Government, Section 197 Cr.P.C. was not attracted with regard to appellant. After coming to the above conclusions, it was not necessary for the CMM to enter into the question as to whether acts alleged against the appellant were discharged in performance of official duty.

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10. The question as to whether a manager of nationalized bank can claim benefit of Section 197 Cr.P.C. is not res integra. This Court in **K.CH. Prasad Vs. Smt. J. Vanalatha Devi and Others, (1987) 2 SCC 52** had occasion to consider the same very question in reference to one, who claimed to be a public servant working in a nationalized bank. The application filed by appellant in above case questioning the maintainability of the prosecution for want of sanction under Section 197 Cr.P.C. was rejected by Metropolitan Magistrate and revision to the High Court also met the same fate. This Court while dismissing the appeal held that even though a person working in a nationalized bank is a public servant still provisions of Section 197 are not attracted at all. In paragraph No.6 of the judgment, following has been held:-

“6. It is very clear from this provision that this section is attracted only in cases where the public servant is such who is not removable from his office save by or with the sanction of the Government. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the government. In this view of the matter even if it is held that appellant is a public servant still provisions of Section 197 are not attracted at all.”

11. The High Court in its impugned judgment has not adverted to the above aspect and has only confined to the discussion as to whether acts alleged of the appellant were in discharge of official duty. High Court also had relied on judgment of this Court in **Parkash Singh Badal (supra)**. We having come to the conclusion that appellant being not a public servant removable from his office saved by or with the sanction of the Government, sanction under Section 197 Cr.P.C. was not applicable. The appellant cannot claim protection under Section 197 Cr.P.C. We are of the view that examination of further question as to whether appellant was acting or purporting to act in the discharge of his official duty was not required to be gone into, when he did not fulfill conditions for applicability of Section 197(1) Cr.P.C.

12. We further notice that CMM in his order dated 03.12.2014 as extracted above made following observations:-

“.....From the FSL report, it is clear that accused S.K. Miglani forged the signatures of Sh. Gautam Dhar on account opening form and moreover, the introducer Rajender Kr.

A is absconding. In view of this Court, an act of forgery done by public servant cannot be considered an act done in discharge of his official duties.....”

13. At the stage, when Court is considering the question regarding applicability of Section 197 Cr.P.C., it was not necessary for the CMM to make observation that appellant has done an act of forgery. The FSL report was one of the evidences collected by I.O. Its evidentiary value was still to be gone into at the time of trial in the light of the evidences, which may come before the trial court.

14. Learned counsel for the appellant has relied on judgment of this Court in **S.P.S. Rathore Vs. Central Bureau of Investigation and Another, (2017) 5 SCC 817**, where this Court had held that although the opinion of a handwriting expert is also relevant, but that too is not conclusive. This Court further held that expert evidence as to handwriting is only opinion evidence, which need to be corroborated either by clear, direct or circumstantial evidence. In Paragraph No. 47, following has been laid down:-

“47. With regard to the contention of the learned Senior Counsel for the appellant-accused that the signatures of Ms Ruchika on the memorandum were forged though she signed the same in front of Shri Anand Prakash, Shri S.C. Girhotra, Ms Aradhana and Mrs Madhu Prakash and they have admitted the same, we are of the opinion that expert evidence as to handwriting is only opinion evidence and it can never be conclusive. Acting on the evidence of any expert, it is usually to see if that evidence is corroborated either by clear, direct or circumstantial evidence. The sole evidence of a handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. A court is competent to compare the disputed writing of a person with others which are admitted or proved to be his writings. It may not be safe for a court to record a finding about a person’s writing in a certain document merely on the basis of expert comparison, but a court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard. The opinion of a handwriting expert is also relevant in view of Section 45 of the Evidence Act, but that too is not conclusive. It has also been held by this Court in a catena of cases that the sole evidence of a handwriting expert is not normally

sufficient for recording a definite finding about the writing being of a certain person or not. It follows that it is not essential that the handwriting expert must be examined in a case to prove or disprove the disputed writing. It is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence, it is usual to see if it is corroborated either by clear, direct evidence or by circumstantial evidence.”

15. The observation made by CMM as extracted above, by giving opinion using the expression that appellant has committed forgery ought to have been avoided. The Magistrate, at any stage prior to final trial, is to avoid any conclusive opinion regarding any evidence collected during investigation. It is true that evidence collected in the investigation can be looked into to form an opinion as to whether prima facie charge is made out against an accused and what is the nature of offence alleged against him.

16. Insofar as the judgment of this Court in **Parkash Singh Badal (supra)** relied on by the counsel for the respondent and other judgments, i.e., **Inspector of Police and Another Vs. Battenapatla Venkata Ratnam and Another, (2015) 13 SCC 87** and **Devinder Singh and Others Vs. State of Punjab, (2016) 12 SCC 87** reiterating the proposition, which was laid down in **Parkash Singh Badal (supra)**, there cannot be any quarrel to the proposition. In **Parkash Singh Badal (supra)**, this Court laid down following in paragraph No.15;-

“15. It is their stand that where the public servant has ceased to be a public servant in one capacity by ceasing to hold office which is alleged to have been misused, the fortuitous circumstance of the accused being in another capacity holding an entirely different public office is irrelevant. It was categorically held in *R.S. Nayak case, (1984) 2 SCC 183*, in para 13 that “on analysis of the policy of the whole section the authority competent to remove the public servant from the office alleged to have misused is alone the competent sanctioning authority”.”

17. Other judgments relied on by the counsel for the respondent lays down the same proposition. Learned counsel for the appellant has also placed reliance on **N.K. Ganguly Vs. Central Bureau of Investigation, (2016) 2 SCC 143**, where this Court in paragraph No.35 laid down following:-

- A “35. From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate Government under Section 197 Cr.P.C., it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to examine the
- B allegations contained in the final report against the appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate Government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegations made
- C against the appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 Cr.P.C. was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their
- D presence.”

18. No exception can be taken to the proposition as laid down in the above case. We having taken the view that appellant being not removable by or saved with the sanction of the Government was not covered by Section 197 Cr.P.C. There was no necessity to consider any
- E further as to whether acts of the appellant complained of were in discharge of official duty or not.

19. We, thus, upheld the order of the CMM dated 03.12.2014 rejecting the application under Section 197 Cr.P.C. on the ground that appellant was not removable by his office saved by or with the sanction
- F of the Government. We, however, delete the following observations from the order dated 03.12.2014:-

- “.....From the FSL report, it is clear that accused S.K. Mighlani forged the signatures of Sh. Gautam Dhar on account opening form and moreover, the introducer
- G Rajender Kr. is absconding. In view of this Court, an act of forgery done by public servant cannot be considered an act done in discharge of his official duties.....”

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S. K. MIGLANI v. STATE NCT OF DELHI  
[ASHOK BHUSHAN, J.]

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20. Although, we uphold the order of the High Court as well as the order of CMM, but the observations made by CMM in its order, as noted above, are deleted. The appeal is partly allowed to the extent indicated above. A

Kalapana K. Tripathy

Appeal partly allowed.

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