IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 05.05.2025

\+ **CRL.M.C. 587/2019 & CRL.M.A. 9493/2022**

ANUJ KUMAR GUPTA ..... Petitioner

versus

ARVIND KUMAR & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ashish Sehrawat, and Mr. Kapil Yadav, Advocates.

For the Respondents : Mr. Amit Prasad, Ms. Ruchika Prasad, Ms. Chanya Jaitly, Mr. Harshil Jain and Mr. Ayodhya Prasad, Advocates for R-1.

Mr. Naresh Kumar Chahar, APP for the State/R-5 with SI Praveen, PS EOW.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed challenging the order dated 27.02.2013 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), South District, Saket Courts, New Delhi in Crl. Rev. No. 22/2010.

2. By the impugned order, the learned ASJ set aside the summoning order dated 12.08.2010 passed by the learned Magistrate while specifically noting that the allegation against Respondent No. 1 is one regarding destruction of evidence collected during the course of investigation, and of weakening of the case of the prosecution which had a reasonable nexus with the official duty of Respondent No. 1 thereby necessitating a prior sanction for prosecution.

3. The brief facts of the case are that the petitioner, in August 2007, had approached Respondent Nos. 2-4 and accused Anish Pandey for securing the admission of his son in the MBBS course. It is alleged that Respondent Nos. 2-4 and accused Anish Pandey, however, on the pretext of providing admission to the son of the petitioner in Vardhman Mahavir College, Safdarjung Hospital cheated the petitioner, and duped him into paying a sum of ₹17,26,500/-. The same incident culminated into the registration of FIR No. 517/2007 at Police Station Sarojini Nagar for offences under Sections 420/468/471/120B of the Indian Penal Code, 1860 ('**IPC**') against Respondent Nos. 2-4 and accused Anish Pandey.

4. Subsequently, the petitioner filed a complaint under Section 200 of the Code of Criminal Procedure, 1973 ('**CrPC**') being CC No.1385/1 against Respondent No. 1 alleging that Respondent No. 1 conducted the investigation in a shoddy manner. It is alleged that Respondent No. 1, during the course of the investigation, twisted, fabricated and also destroyed the evidence against Respondent Nos. 2-4 and accused Anish Pandey. It is alleged that during the course of the

investigation, Respondent No. 1 caught one person who was the brother of Respondent No. 4. It is alleged that through him, Respondent No. 1 caught hold of Respondent No. 4. It is alleged that in the presence of the petitioner, several items such as 12-15 sim cards, 5 cell phones, computer generated list of many colleges, original/copies of documents of many students, letter head of ministry of Railway and BSNL were recovered from the possession of Respondent No. 4.

5. During the course of the investigation, it is alleged that Respondent No. 1 caught Respondent No. 3. It is alleged that in the presence of the petitioner, 20 sim cards, 10-12 debit cards, 5-6 mobile phones, stamps of principal and cashier of Moti Lal Nehru Medical college were recovered from Respondent No. 3. It is alleged that the aforementioned items were recovered by Respondent No. 1 during the course of the investigation, and were destroyed at the instance of Respondent Nos. 2-4. It is alleged that Respondent No. 1 deliberately caused the evidence in relation to the commission of the offence to disappear. It is alleged that owing to the destruction of the documents, Respondent Nos. 2-4 were able to secure bail. It is also alleged that Respondent No. 1 asked the petitioner to settle the matter with the accused persons for a sum of ₹10 lakhs, and further allegedly stated that if the petitioner was not satisfied with the same, Respondent No. 1 would arrange a further meeting with the accused persons.

6. The learned Trial Court by order dated 12.08.2010 issued summon to Respondent No. 1 which was set aside by the impugned

order. It was noted that a reading of Section 197 of the CrPC and Section 140 of the Delhi Police Act makes it clear that before taking cognizance of the offence against public servant/member of the Delhi Police, the prosecuting authority must obtain sanction. It was noted that admittedly the offence alleged to have been committed by Respondent No. 1 was under the colour of his official duties.

7. It was noted that the allegation against Respondent No. 1 was that he destroyed evidence collected during the course of investigation, and weakened the case so that the accused persons were able to procure bail in FIR No. 517/2007. It was noted that the above circumstances showed that there existed a nexus between the act complained, and the duty of Respondent No. 1. It was consequently noted that a prior sanction was required for prosecuting Respondent No. 1, in the absence of which, the summoning order could not be sustained.

8. The learned counsel for the petitioner submitted that the learned ASJ erred in passing the impugned order. He submitted that learned ASJ erred in observing that the acts of Respondent No. 1 were under the colour of his official duty. He submitted that Respondent No. 1 carried out the investigation in a shoddy manner owing to which Respondent Nos. 2-4 were able to secure bail. He submitted that the contention of the petitioner was that Respondent No. 1 had asked the petitioner to settle the matter with the accused persons for a sum of ₹10 lakhs.

9. He submitted that the acts of Respondent No. 1 in asking the petitioner to settle the matter with the accused persons, offering an amount of ₹10 lakhs to the petitioner, and further stating that the petitioner, if is not satisfied, a further meeting could be held with the accused persons depicted that Respondent No. 1 was hand in glove with the accused persons. He submitted that such acts cannot be categorised as an act under the official capacity of Respondent No. 1 which thereby negated the requirement of a prior sanction for prosecution. He submitted that the learned ASJ failed to take into account that Respondent No. 1 misused his colour of duty, and consequently prayed that the impugned order be set aside.

10. *Per contra,* the learned counsel for Respondent No. 1 submitted that the learned ASJ rightly observed that a prior sanction was required to proceed against Respondent No. 1 in accordance with Section 197 of the CrPC and Section 140 of the Delhi Police Act, 1978. He submitted that the petitioner had preferred a complaint against Respondent No. 1 which culminated in the initiation of departmental enquiry against Respondent No. 1. He submitted that the departmental enquiry was conducted for a period of 2 years, and Respondent No. 1 was consequently exonerated in the departmental enquiry.

11. He submitted that Respondent No. 1 is not the first investigating officer in the case as has wrongly been alleged by the petitioner in the present case. He submitted that Respondent No. 4 was not arrested by Respondent No. 1 as has falsely been alleged by the petitioner in the

original complaint. He submitted that Respondent No. 4 was arrested by HC Balbir Singh on 13.10.2007 as Respondent No. 1 was on leave. He submitted that the subsequent and final investigating agency, that is, the Economic Offences Wing followed the same line of investigation as was followed by Respondent No. 1.

12. He submitted that the allegation of the petitioner that Respondent No. 1 "destroyed" the articles found in possession of Respondent No. 3 is without merit. He submitted that Respondent No. 1, during the course of investigation, could not arrest Respondent No. 3 as there did not exist sufficient evidence against Respondent No. 3 during that time. He submitted that Respondent No. 1 had investigated the case only for a brief period of 24 days before the case was transferred to the Crime Branch. He submitted that the case of the petitioner is that Respondent No. 1 conducted the investigation in an improper manner. He submitted that from such facts; it is apparent that the acts undertaken by Respondent No. 1 were in the nature of official duty thereby necessitating the requirement of obtaining a prior sanction for prosecution.

13. *In arguendo,* the learned counsel for Respondent No. 1 submitted that Respondent No. 1 has already been exonerated in the departmental proceedings. He submitted that in light of the decision of the Hon'ble Apex Court in ***Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI And Another*** **: (2020) 9 Supreme Court Cases 636** since Respondent No. 1 has already been exonerated in the departmental proceedings where the standard is one

of "preponderance of probabilities", criminal proceedings against the Respondent No. 1 on same facts cannot be allowed to proceed.

Analysis

14. The petitioner is essentially aggrieved with the impugned order on the ground that the learned ASJ erroneously noted that Respondent No. 1 cannot be prosecuted against without prior sanction under Section 197 of the CrPC. It is the petitioner's case that the act of Respondent No. 1 in asking the petitioner to settle the matter with the accused persons cannot be said to fall within the colour of official duty of Respondent No. 1. It is further the case of the petitioner that since the allegation against Respondent No. 1 is one of destroying the evidence, the same cannot be considered to be done under the colour of duty or authority for which a sanction for prosecution would have been required.

15. Before delving into the question of the correctness of the impugned order, it is pertinent to briefly examine Section 197 of the CrPC and Section 140 of the Delhi Police Act, 1978.

> "*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 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]— (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; (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: [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.] [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 166-A, Section 166-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 370, Section 375, Section 376, [Section 376-A, Section 376-AB, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB] or Section 509 of the Indian Penal Code (45 of 1860).]

(2) 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 the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it

shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]
(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

"140. Bar to suits and prosecution.—
(1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character as aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of: Provided that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.
(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrongdoer not less than one month's notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed.
(3) The plaint shall set forth that the notice as aforesaid has been served on the defendant and the date of such service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof."

16. Upon a conjoint reading of Section 197 of the CrPC and Section 140 of the Delhi Police Act, 1978 it is evident that a prior sanction is required to prosecute the public servant/police officer but for certain exceptions provided in Section 197 of the CrPC. Further, the language materialised under Section 140 of the Delhi Police Act, 1978 makes it

clear that sanction is required not only for acts done in discharge of official duty but also for acts done in excess of such duty. The purpose of necessitating a prior sanction to prosecute public servants finds its genesis in the need to safeguard public interest and to ensure that official acts do not result in vexatious prosecutions.

17. For this reason, the Hon'ble Apex Court in the case of ***State of Orissa v. Ganesh Chandra Jew :*** **(2004) 8 SCC 40** while delineating the scope of Section 197 of the CrPC noted that such acts that have a reasonable nexus with the performance of official duty would not be deprived of protection. The relevant observations are reproduced as:

> *7. 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 of 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 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 this 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.

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11. 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 the 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 the course of service. Its operation has to be limited to those duties which are discharged in the 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 as 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 the 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 the 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…."

(emphasis supplied)

18. The same was reiterated by the Hon'ble Apex Court in the case of ***D. Devaraja v. Owais Sabeer Hussain*** **: (2020) 7 SCC 695**

"68. ***If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of the government sanction for initiation of criminal action against him****.*

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70. ***To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law****."*

(emphasis supplied)

19. From a perusal of the complaint, it is borne out that the petitioner has alleged that Respondent No. 1 has carried out the investigation in an improper manner. The thrust of the case of the petitioner is that Respondent No. 1 carried out the investigation in a shoddy manner, and weakened the case of the prosecution which also led to the accused persons to secure bail. The allegations concededly does not come within the parameters provided in exception under Section 197(1) of the CrPC.

20. Recently, the Hon'ble Apex Court in the case of ***Indra Devi v. State of Rajasthan*** **: (2021) 8 SCC 768** while quashing an FIR against a clerk alleged of conspiracy and forgery of documents observed as reproduced hereunder:

> *"10. We have given our thought to the submissions of the learned counsel for the parties. Section 197 CrPC seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognizance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. (See Subramanian Swamy v. Manmohan Singh [Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] .) The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. However, such sanction is necessary if the offence alleged against the public servant is committed by him "while acting or purporting to act in the discharge of his official duty" and in order to find out whether the alleged offence is committed "while acting or purporting to act in the discharge of his official duty", the yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. (See State of Maharashtra v. Budhikota Subbarao [State of Maharashtra v. Budhikota Subbarao, (1993) 3 SCC 339 : 1993 SCC (Cri) 901] .) The real question, therefore, is whether the act committed is directly concerned with the official duty.*
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> *11. We have to apply the aforesaid test to the facts of the present case. In that behalf, the factum of Respondent 2 not being named in the FIR is not of much significance as the alleged role came to light later on. However, what is of significance is the role assigned to him in the alleged infraction i.e. conspiring with his superiors. What emerges therefrom is that insofar as the processing of the papers was concerned, Surendra Kumar Mathur, the Executive Officer, had put his initials to the relevant papers which was held*

in discharge of his official duties. Not only that, Sandeep Mathur, who was part of the alleged transaction, was also similarly granted protection. The work which was assigned to Respondent 2 pertained to the subject-matter of allotment, regularisation, conversion of agricultural land and fell within his domain of work. In the processing of application of Megharam, the file was initially put up to the Executive Officer who directed the inspection and the inspection was carried out by the Junior Engineer and only thereafter the Municipal Commissioner signed the file. The result is that the superior officers, who have dealt with the file, have been granted protection while the clerk, who did the paper work i.e. Respondent 2, has been denied similar protection by the trial court even though the allegation is of really conspiring with his superior officers. Neither the State nor the complainant appealed against the protection granted under Section 197 CrPC qua these two other officers.

12. We are, thus, not able to appreciate why a similar protection ought not to be granted to Respondent 2 as was done in the case of the other two officials by the trial court and High Court, respectively. The sanction from the competent authority would be required to take cognizance and no sanction had been obtained in respect of any of the officers. It is in view thereof that in respect of the other two officers, the proceedings were quashed and that is what the High Court has directed in the present case as well."

21. It is pertinent to note that the allegation against Respondent No. 1 pertains to improper conduction of investigation. The allegation that during the course of the investigation, Respondent No. 1 allegedly failed to retain the documents thereby weakening the case of the prosecution, though in excess of duty, has a reasonable connection with the official duty of Respondent No. 1. Hence, the requirement of obtaining prior sanction as rightly appreciated by the learned ASJ, cannot be obviated.

22. Even otherwise, it is pertinent to note that based on the same set of allegations of the petitioner, a departmental enquiry was conducted against Respondent No. 1. In such departmental enquiry that spanned

over 2 years, the enquiry officer examined 6 witnesses. Further, Respondent No. 1 was duly exonerated thereby noting that the charge against him was not substantiated. Hence, once the administrative enquiry has exonerated the appellant from the same charges then the continuation of the criminal prosecution would be an abuse of process of law [Ref. ***Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI And Another*** **: (2020) 9 SCC 636**].

23. In view of the above, I find no merit in the present petition and the same is accordingly dismissed. Pending application also stands disposed of.

AMIT MAHAJAN, J

MAY 5, 2025