2024 INSC 967

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. OF 2024
(Arising out of Special Leave Petition (Criminal) Nos.9138-9139 of 2017)

GURMEET KAUR ... APPELLANT

VERSUS

DEVENDER GUPTA & ANOTHER ... RESPONDENTS

J U D G M E N T

NAGARATHNA, J.

Leave granted.

2. Being aggrieved by the order dated 18.09.2017 passed in CRM-M-4549-2015 by the High Court of Punjab and Haryana at Chandigarh in exercise of powers under Section 482 of the Code of Criminal Procedure, 1973 dismissing the petition as not maintainable; and order dated 01.11.2017 passed in application bearing CRM No.33535 of 2017 declining to recall the order dated 18.09.2017, the appellant is before this Court.

3. The relevant facts of the case are that the appellant herein filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC") seeking quashing of complaint No.1383 dated 13.03.2010/11.11.2011 titled "*Devender Gupta vs. Director, Town and Country Planning and others*" along with the proceedings thereof. The said complaint was filed by Devender Gupta under Sections 323, 452, 506, 427, 384, 440, 166, 148, 149 read with Section 34 of the Indian Penal Code, 1860 (for short, "IPC") along with all consequential proceedings and the impugned order dated 20.11.2014 passed by the learned Judicial Magistrate, First Class, Gurgaon summoning the appellant herein and two others for the aforesaid offences were assailed before the High Court.

4. The original complaint filed by Devender Gupta-first respondent herein under various provisions of the IPC referred to above against the present appellant, who was at the relevant time, the District Town Planner (Enforcement) and twelve others was that on 24.09.2006, the appellant had forcibly entered Anupama College of Engineering and Anupama Institute of Management, both situated at Gurgaon District of which the first

respondent was the Chairman, in her official jeep along with some other officials and created chaos and had taken away the college telephone No.2241615 forcibly. That the college had resisted initially but the appellant refused to oblige them; a complaint was lodged before the Bilaspur Police Post regarding the said incident but no action was taken. Thereafter, the complainant met the appellant herein on 10.11.2006 along with his advocate but the appellant had asked for the building map/plan and other documents and the first respondent-complainant had produced the said documents. However, one of the accused, Manipal demanded Rs.20,00,000/- (Rupees Twenty lakhs Only) as an illegal gratification but the first respondent-complainant refused to oblige the same. Consequently, on 05.02.2007 at about 9.45 A.M., the appellant forcibly entered the college premises along with sufficient number of police personnel with heavy machinery and equipment for the purpose of demolition and after vacating the campus of the staff and students, the demolition took place. The said action of the appellant was with a *mala fide* intention owing to non-payment of the bribe made previously; that an FIR was registered on the

instructions of accused No.5 and the same was found to be false.

Further, Writ Petition (C) No.16184/2001 had also been filed in which the High Court had appointed a Local Commissioner to inspect the college campus and he had submitted his report on 18.10.2007 stating that there was an existing building which was constructed prior to the year 2004 which was much before the notification being issued under the provisions of The Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 ("the Act" for the sake of brevity). Therefore, the Notification issued under the said Act was not applicable to the subject building inasmuch as its construction was prior to 05.08.2005.

5. The aforesaid complaint was filed under Section 200 of the CrPC as a private complaint and on preliminary evidence and recording the statement of the complainant and witnesses namely CW-1 and CW-2 and documentary evidence at Ex.PA to PZ, Ex. PAA to Ex.PDD., the Trial Court issued a summoning order on 20.11.2014 against the present appellant and two others only under Sections 323, 452, 506, 427, 384, 440, 166 read with Section 120-B of the IPC.

6. Being aggrieved by the summoning order and also the very filing of the complaint against the appellant herein, the aforesaid petition was filed before the High Court. On considering the pleadings on record as well as the contentions, the High Court dismissed the said writ petition. Although there were two main facets of the said writ petition: one with regard to the quashing of the complaint itself on merits on the premise that no offence whatsoever was made out; the second aspect of the said case assumes significance inasmuch as the contention of the appellant before the High Court was that there was no sanction order passed under Section 197 of the Code of Criminal Procedure, 1973 (CrPC) and therefore, the very initiation of the criminal proceedings against the appellant herein were vitiated.

7. The High Court dismissed the said writ petition by stating that at that stage it could not categorically be opined whether there was an illegal act as such which was committed by the public servant namely the appellant herein which required sanction, or the requirement of sanction was unnecessary having regard to the nature of the acts complained against; that it required a detailed inquiry inasmuch as the Trial Court had held

that there was a *prima facie* evidence against the appellant herein. In the above premise, the Writ Petition was dismissed.

8. Learned senior counsel Sri Mukul Rohatgi assisted by Sri Sameer Rohatgi, learned counsel submitted that taking into consideration the allegations against the appellant herein, it is a clear case where the appellant, during the course of the discharge of her official duties had carried out the demolition on the basis of the instructions of her superior officers and therefore, there was no malicious act, malice or any illegal act which could have been attributed to the appellant herein let alone any criminal act which could have been alleged against the appellant herein.

9. It was submitted that the High Court ought to have gone into the aspect as to whether any offence at all was made out and quashed the criminal complaint. It was further submitted that given the nature of allegations against the appellant herein, it can be noted that the said allegations emanate from the nature of the duties that the appellant carried out on 05.02.2007 inasmuch as the demolition of the illegal construction was carried out on the said date which neither can be termed to be an instance of "excess" in the discharge of her duties nor can it be said that

there was a criminal intent on the part of the appellant herein. The appellant had simply performed her duties as per the instructions of her superior officers.

10. It was therefore submitted that the sanction for prosecution within the scope and ambit of Section 197 of the CrPC, which is a mandatory requirement, had to be taken from the State Government before the initiation of criminal proceedings even though the criminal proceedings in the instant case is under Section 200 of the CrPC by way of a private complaint. In this regard our attention was also drawn to Sections 20 and 21 of the Act to contend that no suit, prosecution and other legal proceedings would lie against any person in respect of anything which has been done in good faith or intended to be done in pursuance of the Act or the rules made thereunder. Further, no Civil Court would have any jurisdiction to entertain or decide any question relating to matters under the Act or the rules made thereunder. It was submitted that the object and purpose of obtaining sanction under Section 197 of the CrPC is in order to protect the *bona fide* acts of officers and officials done during the discharge of their official duties and that the salutary intent of

the said provision must be realised and hence, before initiation of any criminal proceeding, the condition precedent of obtaining a sanction is a mandatory requirement and hence, in the instant case the absence of any sanction order being issued by the State Government has vitiated the very initiation of the criminal complaint against the appellant herein. In support of this submission, reliance was placed on the following decisions of this Court:

(1) ***D.T. Virupakshappa vs. C. Subhash, (2015) 12 SCC 231 ("D.T. Virupakshappa")***;

(2) ***Abdul Wahab Ansari vs. State of Bihar, (2000) 8 SCC 500 ("Abdul Wahab Ansari")***

(3) ***D. Devaraja vs. Owais Sabeer Hussain, (2020) 7 SCC 695 ("D. Devaraja")***

(4) ***Amod Kumar Kanth vs. Association of Victim of Uphaar Tragedy and Anr., Crl. Appeal No.1359/2017*** **disposed of on 20.04.2023.**

11. It was submitted that having regard to the position of law which squarely apply to the facts of the present case, the impugned order may be set aside and the initiation of the criminal proceedings against the appellant may be quashed and all consequential orders thereby may be quashed.

12. Per contra, learned counsel for the first respondent Sri Aseem Mehrotra, at the outset submitted that the impugned order would not call for any interference; that the appellant would now have to face the criminal trial; and that the appellant has had the benefit of the interim order of stay of proceedings at the hands of this Court. Therefore, the appeal may simply be dismissed *in limine*, so that the appellant would stand the test of criminality which has been alleged against her. It was contended that the first respondent was constrained to file the complaint owing to the fact that the Notification issued under the Act was not at all applicable and that the demolition carried out by the appellant herein was with vengeance and malice; that she had no authority to carry out the demolition of the building which was constructed prior to 05.08.2005 inasmuch as the notification did not apply to the period prior to 05.08.2005.

13. Further, the first respondent herein had made an application for regularization of the alleged illegal construction, the same was pending consideration and instead of considering the application for regularization made by the first respondent herein, the Department kept the same pending and went ahead

with the demolition. This has caused not only monetary loss but also has prejudiced the institutions of which the first respondent is the Chairman.

14. In this regard, learned counsel for the first respondent drew our attention to the following judgments of this Court:

(1) ***Bhagwan Prasad Srivastava vs. N.P. Mishra, (1970) 2 SCC 56 ("Bhagwan Prasad Srivastava")***

(2) ***Urmila Devi vs. Yudhvir Singh, (2013) 15 SCC 624, ("Urmila Devi")***

(3) ***Punjab State Warehousing Corporation vs. Bhushan Chander, (2016) 13 SCC 44 ("Bhushan Chander")***

(4) ***Bakhshish Singh Brar vs. Gurmej Kaur, (1987) 4 SCC 663 ("Bakhshish Singh Brar")***

15. Learned counsel for the first respondent submitted that there is sufficient material against the appellant herein who cannot be given the benefit of the legal position that the absence of sanction prior to the initiation of criminal proceeding would vitiate the entire proceeding. He submitted that in the event this Court was to hold that the sanction under Section 197 of the CrPC was a necessary condition to be complied with by the first respondent herein in the context of filing a criminal complaint

under Section 200 of the CrPC, then, in the absence of such sanction being taken till date, liberty may be reserved to the first respondent herein to make a representation for seeking such a sanction.

16. Learned counsel for the second respondent-State, Sri Akshay Amritanshu with reference to his counter affidavit and other pleadings submitted that having regard to the fact that appellant herein was on the relevant day discharging her duties as a District Town Planner and it was in accordance with the scope and ambit of her authority that the demolition was carried out, the first respondent herein could not have initiated the criminal proceeding as against her in the absence of an order of sanction for doing so under the provisions of Section 197 of the CrPC.

17. Learned counsel for the second respondent-State also submitted that there is no merit in the arguments of the first respondent's counsel that the appellant herein ought to have been slow in carrying out the demolition inasmuch as the application for regularisation was pending before the Department and therefore the act of demolition of the illegal structure was an

instance of excess as demonstrated by the various dicta of this Court. He submitted that in view of the conspectus of facts in the instant case, it was not at all a case of excess inasmuch as the Department which had to consider the application for regularisation was a different wing and the representation made for regularisation was not an impediment for carrying out the demolition. It was therefore submitted that appropriate orders may be made in this appeal.

18. It was also submitted that this Court may be mindful of the fact that when an officer or an official of the State is carrying out the duty entrusted, the object and purpose of passing an order of sanction for prosecution under Section 197 of the CrPC must be borne in mind that a public servant ought not to be exposed to criminal prosecution or other kinds of litigation which would be wholly unjustified.

19. In the circumstances, learned counsel for the second respondent submitted that the impugned order may be set aside and appropriate relief may be granted to the appellant herein.

20. We have considered the arguments advanced at the bar in light of the facts which emanate in this case. At this stage itself, we may opine that we would confine the scope of this appeal to the question whether it was necessary for the first respondent herein to have made an application seeking sanction under Section 197 of the CrPC and thereafter proceeded to file the complaint under Section 200 of the CrPC. We also state that having regard to our reasoning and our decisions, it may not be necessary to go into the merits whether the appellant herein had indeed committed the offences alleged against her and therefore, the same ought to be quashed also.

21. For ease of reference, Section 197 of the CrPC is extracted as under:

> "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-
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> (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.] *[Added by Act 43 of 1991, Section 2 (w.e.f. 2-5-1991).]*

22. As already noted, the object and purpose of the said provision is to protect officers and officials of the State from unjustified criminal prosecution while they discharge their duties within the scope and ambit of their powers entrusted to them. A reading of Section 197 of the CrPC would indicate that there is a bar for a Court to take cognizance of such offences which are mentioned in the said provision except with the previous sanction of the appropriate government when the allegations are made against, *inter alia,* a public servant. There is no doubt that in the instant case the appellant herein was a public servant but the question is, whether, while discharging her duty as a public servant on the relevant date, there was any excess in the discharge of the said duty which did not require the first respondent herein to take a prior sanction for prosecuting the

appellant herein. In this regard, the salient words which are relevant under sub-section (1) of Section 197 are "*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*". Therefore, for the purpose of application of Section 197, a *sine qua non* is that the public servant is accused of any offence which had been committed by him in "discharge of his official duty". The said expression would clearly indicate that Section 197 of the CrPC would not apply to a case if a public servant is accused of any offence which is *de hors* or not connected to the discharge of his or her official duty. However, there are a line of judgments which have considered this expression in two different ways which we shall now advert to.

23. Learned senior counsel and learned counsel for the appellant have submitted the following judgments which indicate that Section 197(1) would apply prior to the initiation of a criminal proceeding under Section 197 of the CrPC. On the basis of the said judgments they have contended that it is during the discharge of her official duty that the demolition had taken place

in the instant case and therefore, the necessity of an order of sanction being passed by the Government was a *sine qua non* prior to initiation of the criminal proceeding. The judgments relied upon by the learned senior counsel for the appellant herein could be adverted to at this stage.

a) In ***D.T. Virupakshappa vs. C. Subhash, (2015) 12 SCC 231 ("D.T. Virupakshappa")***, the appellant therein was accused in a private complaint before the Civil Judge (Junior Division) and JMFC, on which the learned Magistrate took cognizance, registered Criminal Case No.74 of 2009 and issued summons to the appellant therein. The offences alleged were under Sections 323, 324, 326, 341, 120, 114, 506 read with Section 149 of the IPC. The appellant therein moved the High Court under Section 482 of the CrPC which was declined by the impugned order therein. The main contention of the appellant therein was that the learned Magistrate could not have taken cognizance of the alleged offences and issued process to the appellant without sanction from the State Government under Section 197 of CrPC, and on that sole ground, the High Court should have quashed the

proceedings. It was alleged that the appellant therein exceeded in exercising his power during investigation of a criminal case and assaulted the respondent therein in order to extract some information with regard to the death of a person, and in that connection, the respondent therein was detained in the police station for some time. Therefore, the allegation of the appellant therein had an essential connection with the discharge of the official duty and therefore, the previous sanction was necessary. The issue of "police excess" during investigation and requirement of sanction for prosecution in that regard, was also a subject-matter in ***State of Orissa vs. Ganesh Chandra Jew, (2004) 8 SCC 40 ("Ganesh Chandra Jew")*** which was relied upon. There was also reliance on ***Om Prakash vs. State of Jharkhand, (2012) 12 SCC 72 ("Om Prakash").*** The Court held that the ratio of the aforesaid two judgments squarely apply to the case of the appellant therein and having regard to the factual matrix of that case, it was observed that the offensive conduct was reasonably connected with the performance of the official duty of the appellant therein.

Therefore, the learned Magistrate could not have taken cognizance of the case without the previous sanction of the State Government and the High Court had missed this crucial point in the impugned order. This Court observed that in case such sanction is obtained and the same is produced before the learned Magistrate, the matter could be proceeded further before the learned Magistrate in accordance with law.

b) In ***Abdul Wahab Ansari vs. State of Bihar, (2000) 8 SCC 500 ("Abdul Wahab Ansari")***, the facts were that the son of the deceased, who was respondent No.2 therein, had filed a complaint before the Chief Judicial Magistrate, alleging commission of offences by the appellant therein under Sections 302, 307, 380, 427, 504, 147, 148 and 149 of the IPC as well as Section 27 of the Arms Act. The Chief Judicial Magistrate was of the opinion that the provisions of Section 197 of the CrPC would have no application to the facts of the case. Further, there was sufficient evidence available to establish a *prima facie* case and therefore had directed issuance of non-bailable warrants against the appellant therein and other accused persons. The appellant therein

moved the High Court under Section 482 of the CrPC praying, *inter alia,* that no cognizance could be taken without a sanction of the appropriate Government, as required under Section 197 of the CrPC as the appellant was discharging his official duty pursuant to an order of the competent authority. The High Court opined that all the questions could be raised at the time of framing of charge and disposed the application filed by the appellant therein. Before this Court, two questions were raised and it was observed that previous sanction of the competent authority being a precondition for the Court taking cognizance of the offences if the offences alleged had been committed by the accused was in discharge of his official duty, the question touched upon the jurisdiction of the Magistrate in the matter of taking cognizance and therefore, there was no requirement that an accused should wait for taking such plea till the charges were framed. Placing reliance on certain decisions of this Court, it was observed in this case that the appellant therein had been directed by the Sub-Divisional Magistrate to be present with police force and remove the encroachment in question and in the course of

discharge of his duty to control the mob, he had directed for opening of fire, which was in exercise of the power conferred upon him and the duty imposed upon him under the orders of the Magistrate. Hence, Section 197(1) of the CrPC applied to the facts of the case. Since no sanction had been taken, the cognizance by the Magistrate was bad in law and therefore, the same was quashed *qua* the appellant therein and the appeal was allowed.

c) In ***D. Devaraja vs. Owais Sabeer Hussain, (2020) 7 SCC 695 ("D. Devaraja"),*** the facts were that the High Court had disposed of the application under Section 482 of the CrPC which was filed for quashing the order passed by the Additional Chief Metropolitan Magistrate III, Bengaluru City in taking cognizance of a private complaint, *inter alia*, against the appellant-accused therein, for offences punishable under Sections 120-B, 220, 323, 330, 348 and 506-B read with Section 34 of the IPC. The High Court did not quash the impugned order of the Additional Chief Metropolitan Magistrate dated 27.12.2006, but remitted the complaint back to the learned Additional Chief Metropolitan Magistrate

instead, with, *inter alia,* liberty to the appellant-accused therein to apply for discharge. The question considered by this Court was whether the learned Magistrate could, at all, have taken cognizance against the appellant therein, in the private complaint, in the absence of a sanction under Section 197 of the CrPC read with Section 170 of the Karnataka Police Act, 1963, as amended by the Karnataka Police (Amendment) Act, 2013, and if not, whether the High Court should have quashed the impugned order of the Magistrate concerned, instead of remitting the complaint to the Magistrate concerned and requiring the appellant-accused therein to appear before him and file an application for discharge. Referring to several judgments of this Court, Indira Banerjee, J. speaking for the Bench observed in paragraph 66 to paragraph 71 as under:

> "66. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the Government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197

of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate Government.

67. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a policeman assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However, if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

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.

69. The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty

and/or act done under colour of or in excess of such duty or authority.

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.

71. If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate Government is obtained under Section 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act."

It was concluded that the High Court had erred in law refusing to exercise its jurisdiction under Section 482 of the CrPC to set aside the impugned order of the learned Magistrate taking cognizance of the complaint, after having held that it was a recognized principle of law that sanction was a legal requirement which empowers the court to take cognizance. This Court allowed the appeal and set aside the judgment and order under appeal and the complaint was quashed for want of sanction.

d) In ***Amod Kumar Kanth vs. Association of Victim of Uphaar Tragedy, Criminal Appeal No.1359 of 2017*** disposed of by three-Judge Bench of this Court on 20.04.2023 of which one of us (Nagarathna, J.) was a member, it was observed that the question of cognizance being taken in the absence of sanction and thereby Section 197 of the CrPC being flouted is not to be conflated and thereby confused with the question as to whether an offence has been committed. The salutary purpose behind Section 197 of the CrPC is protection being accorded to public servants. In paragraphs 28, 29 and 31, it was observed as under:

> "(28) The State functions through its officers. Functions of the State may be sovereign or not sovereign. But each of the functions performed by every public servant is intended to achieve public good. It may come with discretion. The exercise of the power cannot be divorced from the context in which and the time at which the power is exercised or if it is a case of an omission, when the omission takes place.
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> (29) The most important question which must be posed and answered by the Court when dealing with the argument that sanction is not forthcoming is whether the officer was acting in the exercise of his official duties. It goes further. Even an officer who

acts in the purported exercise of his official power is given the protection under Section 197 of the Cr.P.C. This is for good reason that the officer when he exercises the power can go about exercising the same fearlessly no doubt with bona fides as public functionaries can act only bona fide. In fact, the requirement of the action being bona fide is not expressly stated in Section 197 of the Cr.P.C., though it is found in many other statutes protecting public servants from action, civil and criminal against them.

x x x x

(31) One ground which has found favour with the High Court against the appellant is that the appellant, according to the High Court, could raise the issue before the Magistrate.

Here we may notice one aspect. When the question arises as to whether an act or omission which constitutes an offence in law has been done in the discharge of official functions by a public servant and the matter is under a mist and it is not clear whether the act is traceable to the discharge of his official functions, the Court may in a given case tarry and allow the proceedings to go on. Materials will be placed before the Court which will make the position clear and a delayed decision on the question may be justified. However, in a case where the act or the omission is indisputably traceable to the discharge of the official duty by the public servant, then for the Court to not accept the objection against cognizance being taken would clearly defeat the salutary purpose which underlies Section 197 of the Cr.P.C. It all depends on the facts and therefore, would have to be decided on a case-to-case basis."

It was concluded that learned Magistrate had erred in the facts of the said case in taking cognizance against the

appellant therein contrary to the mandate of Section 197 of the CrPC and on that short ground alone, the appeal was allowed and the proceedings challenged in Section 482 were quashed. However, it was observed that the same would not stand in the way of the competent authority taking a decision in the matter and/or granting sanction for prosecuting the appellant therein in accordance with law.

24. Learned counsel for the first respondent tried to distinguish the said judgments by another set of judgments of this Court wherein the question, whether the officer or official in discharge of the official duties had exceeded limits of the official authority or capacity and therefore, there was no necessity for seeking a sanction for prosecution for the excess committed by an officer or official during the course of discharge of duty. In this regard, the following judgments have been relied upon by the learned counsel for the first respondent.

a) In ***Bhagwan Prasad Srivastava vs. N.P. Mishra, (1970) 2 SCC 56 ("Bhagwan Prasad Srivastava"),*** the facts were that the appellant therein had used defamatory language towards the complainant and the two accused persons had

insulted and humiliated him in the eyes of the public. The question before this Court was whether complainant's case was covered by Section 197 of the CrPC and previous sanction of the superior authority was necessary before the trial court could take cognizance of the complaint. It was held that the alleged offence consisted of the use of defamatory and abusive words and of getting the complainant forcibly turned out of the operation theatre by the cook. This was not a part of the official duty of the appellant therein as a Civil Surgeon or that it was directly connected with the performance of his official duty that without so acting he could not have properly discharged it. Consequently, it was observed that it was not necessary to seek sanction under Section 197 of the CrPC. It was observed that the object and purpose underlying Section 197 of the CrPC is to afford protection to public servants against frivolous, vexatious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. This Section is designed to facilitate an effective and unhampered performance of their official duty

by public servants by providing for scrutiny into the allegations of commission of offences by them by their superior authorities and prior sanction for their prosecution as a condition precedent to the cognizance of the cases against them by the courts. The said provision therefore cannot be construed too narrowly or too widely. A too narrow and pedantic construction may render it otiose for it is no part of an official duty to commit an offence. This Court was of the view that 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. One must also guard against too wide a construction. Therefore, a line has to be drawn between the narrow inner circle of strict official duties and acts outside the scope of official duties. Thus, there must be a reasonable connection between the act and the discharge of the 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.

Referring to ***Amrik Singh vs. State of Pepsu, (1955) 1 SCR 1302 at 1307 ("Amrik Singh"),*** the test to be adopted was, 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; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution. It was further observed that the quality of the act that is important and if it falls within the scope and range of the official duties of the public servant concerned the protection contemplated by Section 197 of the CrPC will be attracted. On the facts of the aforesaid case, it was observed that sanction was unnecessary and therefore, the appeal was dismissed.

We feel that the aforesaid case would not apply to the present case having regard to the facts that have been elucidated above.

b) Sanction for prosecution of a police officer accused of causing grievous injuries and death in conducting raid and search and whether the police officer concerned while acting in purported discharge of official duty exceeded limits of his official capacity, were issues which were determined in ***Bakhshish Singh Brar vs. Gurmej Kaur, (1987) 4 SCC 663 ("Bakhshish Singh Brar").*** The matter arose before this Court because the petitioner therein being a government servant was being proceeded against in the absence of a sanction under Section 197 of the CrPC for the offences under Sections 148, 302, 325, 323, 149 and 120-B of the IPC. The contention of the petitioner therein was that cognizance of the offence under Section 197 of the CrPC could not have been taken nor the trial proceeded with without the sanction of the appropriate authorities. The question was, whether, while investigating and performing his duties as a police officer, was it necessary for the petitioner therein to conduct himself in such a manner which would result in such consequences such as injuries of one of the alleged accused and consequent death. Dwelling on the said

issue, this Court observed that 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 limits. Taking note of Section 197 of the CrPC which is at the stage of taking cognizance, this Court observed that the criminal trial should not be stayed in all cases at the preliminary stage and it was observed on the facts of the case that the trial should proceed and the question of sanction under Section 197 of the CrPC may be agitated after some evidences have been noted by the trial court.

c) In ***Urmila Devi vs. Yudhvir Singh, (2013) 15 SCC 624, ("Urmila Devi")*** there are two concurring judgments by this Court. In the said case, the facts were that the appellant therein had filed a complaint against the respondent alleging that the respondent therein had threatened the appellant and another person that if they did not withdraw the complaint

filed by them earlier as against a third person under Section 500 of the IPC both of them will not remain in service. The learned Chief Judicial Magistrate, Panchkula had summoned the accused Nos.1 to 10 and 12 to face the trial for the offences under Sections 323, 354, 389, 452, 458, 500 and 506 read with Sections 34 and 120-B of the IPC. It was contended that none of the acts complained of against the respondent therein would amount to exercise of any powers in his official capacity as the SDM and, therefore, he could not have taken umbrage under Section 197 of the CrPC. On considering the allegations against the respondent therein, this Court observed that the behaviour of the respondent therein as written in the complaint of the appellant, if found to be true, could only be held to be a high-handed one bordering on indecency of the highest order, wholly abusing his status as the SDM and can never be held to have acted within the statutory framework of law. That none of the actions alleged against the respondent therein by the appellant therein could be held to be one in which he acted in his capacity as the Executive Magistrate. This is because the

respondent therein could not have barged into the house of a lady, that too at odd hours of 10.00 pm accompanied by a posse of police officers under the guise of ascertaining the truthfulness or otherwise of a complaint and for that purpose engage the services of two cameraman also with video cameras. It was observed that having regard to the aforesaid allegations against the respondent therein, the invocation of Section 197 of the CrPC was wholly uncalled for and consequently the impugned orders of the learned Additional Sessions Judge as well as the High Court was set aside and the appeal filed by the appellant complainant was allowed.

T.S. Thakur, J. (as the learned Chief Justice then was) in his concurring judgment discussed the term "official" in its various connotations. For the purpose of understanding the expression "acting or purporting to act in the discharge of his official duties" in Section 197 of the CrPC which provides for obtaining a sanction of a public servant before he could be proceeded against for offences alleged to have been committed by him. It was observed that the test of direct and reasonable connection between the official duty of the

accused and the acts allegedly committed by them is, therefore, the true test to be applied while deciding whether the protection of Section 197 of the CrPC is available to a public servant accused of the commission of an offence. It was further observed that public functionaries cannot under the cloak of purported discharge of official duties resort to harassment and humiliation of the citizens on the pretext of a complaint having been received by them, especially when the same does not disclose the commission of any offence triable by the Executive Magistrate or cognizable by the police. Therefore, the allegations made against the respondent therein in the said case were held to be outside the scope of discharge of official duties and hence, the plea that Section 197 of the CrPC had to be applied, was rejected.

It is necessary to appreciate the backdrop of the facts in the aforesaid case in which the complaints were made by the appellant therein against the respondent therein which we have epitomized above. It appears that the SDM in the aforesaid case was inquisitive about the adulterous relationship between the appellant therein and another

person and a complaint having been received in that regard, had entered the house of the appellant (a woman) after sunset with a posse of police force, carrying video cameras for conducting an unwarranted search of the house, humiliating and invading the privacy of the appellant therein, insulting and humiliating another person by asking him to undress and dragging both of them to the police station for medical examination against their wishes, especially when male doctors were asked to examine the appellant therein (a woman) without any lawful justification for doing so. Therefore, the said judgment squarely turns on the glaring facts of the said case and cannot at all be applied to the facts which arise in the present case.

d) In ***Punjab State Warehousing Corporation vs. Bhushan Chander, (2016) 13 SCC 44 ("Bhushan Chander"),*** the allegations against the respondent accused who was working as a Godown Assistant in State Corporation was that he misappropriated 11 gunny bales valuing Rs.38,841 and tampered with the record of the department concerned. Prosecution under Sections 409, 467, 468 and 471 of the IPC

was initiated without obtaining any sanction under Section 197 of the CrPC. *Inter alia*, it was contended that the question of invoking Section 197 of the CrPC would not arise in the case of employees of Public Sector Undertakings (PSU). Allowing the appeal, it was held that there has to be reasonable connection between the omission or commission and the discharge of official duty or the act committed was under the office held by the official concerned. If the acts, omission or commission of which are totally alien to the discharge of the official duty, question of invoking Section 197 of the CrPC would not arise. In the said case, this Court observed that on the factual matrix as it obtained sanction under Section 197 of the CrPC was unnecessary. Reliance was placed on the judgment of this Court in ***Matajog Dobey vs. H.C. Bihari, AIR 1956 SC 44 ("Matajog Dobey")*** wherein it was opined that there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. In

such an event, the need for obtaining a sanction under Section 197 of the CrPC would arise. Ultimately, in order to answer this query, the facts of each case would have to be considered and whether an offence has been committed in the course of official duty or not, or under colour of office cannot be answered hypothetically. In the said case, it was held the High Court was not right in setting aside the conviction and sentence on the ground that the trial is vitiated in the absence of sanction. Consequently, the appeal was allowed and the judgment and order passed by the High Court was set aside and the matter was remanded to decide the revision petition in accordance with law.

25. We have considered the facts of the present case in light of the aforesaid rulings and the observations made by this Court. The relevant facts of the case are that on 05.08.2005, a notification was issued under the provisions of the Act. The said notification declared the area around the Government Primary School at village Bilaspur as a Controlled Area under the provisions of the said Act. The area of the respondent College (Anupama College) was also declared as a Controlled Area.

Thereafter, on 06.03.2006, First Show-Cause Notice was issued by the predecessor of the appellant herein to the respondent regarding additional construction raised in Anupama College. The representatives of the first respondent sought time to file a reply. When the matter stood thus on 19.06.2006, the appellant was appointed as District Town Planner (Enforcement), Gurgaon.

26. As there was no reply to the show-cause notice and the construction continued, the appellant herein issued restoration order under Section 12(2) of the Act on 09.10.2006. The appellant also lodged FIR No.364 dated 13.10.2006 with Police Station Bilaspur. Subsequently, on the request made by the appellant, the District Magistrate deputed two Duty Magistrates for overlooking the demolition. On 04.02.2007 and 05.02.2007, the demolition operation of the additional unauthorized construction was carried out. The respondent made a complaint against the appellant to the Senior Town Planner, Town and Country Planning Department stating that the appellant had demanded illegal gratification of Rs.20 lakhs and when that was not paid, the appellant had carried the demolition of the main building without serving any notice and thereby causing loss to

the College. The appellant informed the Director, Town and Country Planning that all the construction raised after the date of notification had been demolished.

27. Subsequently, a second show-cause notice under Section 12(2) was issued owing to re-erection of the demolished portion. On 12.03.2007, the appellant relinquished her charge of DTP (E), Gurgaon owing to her transfer. Subsequently, on 05.04.2007, a preliminary report was submitted by the ADC Gurgaon to the effect that the demolition was unlawful.

28. CWP No.6425 of 2017 was filed by the first respondent before the High Court seeking quashing of second show-cause notice dated 12.03.2007. The appellant herein was arraigned as respondent no.4 in the said writ petition. In response to the said writ petition, the ADC Gurgaon submitted modified and amended report specifically holding that the demolition was as per law. Another restoration order was passed on 21.08.2007 due to continued unauthorized construction by the respondent. However, later on, accepting the report of the Local Commissioner, the High Court vacated the stay granted to the first respondent, while observing that the ADC Report had been

filed by the Government and the first respondent herein had threatened the Local Commissioner and deserves no relief.

29. That, it is only after lapse of three years from the date of demolition, first respondent herein filed a Criminal Complaint No.1383 of 2010 under Sections 34, 148, 149, 166, 323, 384, 427, 440, 452 and 506 IPC in the Court of Additional CJM, Gurgaon against 13 accused. The JMFC discharged all other accused except the appellant and accused nos.2 and 4 in Complaint No.1383 of 2010 and the summoning order was passed against the appellant and accused nos.2 and 4, namely, Senior Town Planner and Junior Engineer, Town & Country Planning (E).

30. It is in the aforesaid circumstances that the appellant filed the petition under Section 482 CrPC before the High Court seeking for quashing of the summoning order dated 20.11.2014, in which initially a stay was granted and thereafter the said CRM-M was dismissed as not maintainable.

31. We have perused the impugned order of the High Court in light of the aforesaid facts and submissions and the judicial dicta on the position of law applicable in the instant case.

32. We find that the facts of the present case would clearly indicate that the appellant herein who is accused of carrying out the demolition was doing so within the scope and ambit of her authority. We find that this is not a case where the appellant herein carried out the demolition dehors any legal backing or basis; neither was the said act of carrying out of the demolition outside the scope of her authority as the District Town Planner in the Enforcement Division. The appellant was carrying out the orders of the superior officers. There is a correlation between the act of demolition and the discharge of official duty. The demolition was carried out during the course of performance of appellant's official duties. The fact that an application was filed seeking regularisation of the construction put up by the first respondent would indicate that even according to the first respondent, there was a digression and other irregularities in the construction put up which required regularisation. However, the contention of learned counsel for the first respondent is that when such an application was pending, the appellant had no authority to demolish the construction. We do not think that such an argument would impress us for the reason that the mere

pendency of the application seeking regularisation before another department would have been an impediment for carrying out the demolition inasmuch as there was sufficient basis for doing so and was done under the orders of the superior authority and not independently as such. The fact that an application for regularization of the construction put up was filed implied that there was a deficiency/irregularity in the construction put up by the respondent No.1 herein. The impugned demolition cannot also be termed as an "excess".

33. In the circumstances, we observe that the first respondent herein ought to have sought sanction for prosecution under Section 197 of the CrPC in the instant case. The same, not having been done vitiated the initiation of the criminal proceeding against the appellant herein. Consequently, the summoning order and the consequent steps taken by the Trial Court pursuant to the said summoning order are liable to be quashed and are thus quashed. Insofar as the very initiation of the complaint is concerned, we observe that since there was no prior order of sanction passed under Section 197 of the CrPC, the initiation of the complaint itself, is *non est*.

However, we reserve liberty to the first respondent herein to take steps in accordance with law and seek an order of sanction.

The appeals are allowed and disposed of in the aforesaid terms.

. . . . . J.
[B.V. NAGARATHNA]

. . . . . J.
[NONGMEIKAPAM KOTISWAR SINGH]

NEW DELHI;
NOVEMBER 26, 2024.