2025 INSC 16

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 4915 OF 2024
(Arising out of Special Leave Petition(Crl.) No.5248/2017)

DINESH KUMAR MATHUR … APPELLANT(S)

VERSUS

STATE OF M.P. & ANR. …RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

1. Impugned in this appeal is the judgment and order dated 28th April, 2017 of the High Court of Madhya Pradesh, Jabalpur (Bench at Indore) passed in Misc. Criminal Case No.12383 of 2016, whereby a petition under Section 482 of the Code of Criminal Procedure, 1973[1] seeking quashing of the First Information Report dated 14th May, 2016 and subsequent proceedings in Crime No.241 of 2016, was refused.

2. The facts, as emanating from the record, are that: -

2.1 House No.D-90, Dindayal Nagar, Ratlam, was allotted on hire purchase basis to one Gopaldas s/o Narayandas, *vide* agreement between him

[1] For short, Cr.P.C.

and the Madhya Pradesh State Housing Board on 10th January, 1991. He sold the said property, and handed over possession thereof, to one Mangi Bai upon receipt of Rs.12,500/- as consideration. It was agreed *inter se* these parties that upon being granted the registration of the house, Gopaldas would execute a sale deed in favour of Mangi Bai. An agreement to sell to such effect was drawn up on 11th January, 1991.

2.2 Mangi Bai, subsequently for a consideration of Rs.19,000/- sold the said property to respondent No.2[2] *vide* agreement to sell dated 17th December, 1994.

2.3 One Ashok Dayya, who has been made co-accused in the complaint, has allegedly, in connivance with other persons namely, Ramesh Sharma, Jitendra Sharma, Narendra @ Pappu Sharma and members of the Housing Board, forged the Power of Attorney of the original seller - Gopaldas in his favour and got the said property registered in his own name.

2.4 The appellant herein is an official of the Housing Board and it is said that the act perpetrated by Ashok was with his aid and assistance. It is against this transfer of property that the subject FIR was lodged, and after investigation a chargesheet filed under Sections 419, 420, 467, 468, 471 and 120B r/w 34, Indian Penal Code 1860[3] against five persons, namely, Ashok

[2] Hereinafter, the 'complainant'
[3] For short 'IPC'

(A-1), Ramesh Chand (A-2), Nanalal (A-3), Krishna Singh (A-4) and Dinesh Kumar D.K. (A-5).

3. The appellant, aggrieved by the above action, preferred the petition for quashing before the High Court. The reasoning for the High Court refusing such prayer is found in paragraph 7 of the impugned judgment and order. For ease of reference, the same is extracted hereinbelow :-

> "[7] From the charge-sheet it is clear that police found prima facie case against the applicant and filed charge-sheet against him. In the charge-sheet it is clearly mentioned that applicant without inquiring whether alleged power of attorney was executed by Gopaldas or not in connivance with other co-accused for getting illegal profit on the basis of forged power of attorney executed sale deed of suit house in favour of co-accused Ashok Dayya. In the statement of Rajesh, Nilesh, Deepak, Ashish, Mangibai, Nemubai @ Nirmlabai, Manjubai and Gopaldas it is mentioned that co-accused Ashok Dayya in connivance with employee and officers of Housing Board got sale deed of suit house executed in his favour on the basis of forged power of attorney of Gopaldas. So prima facie It appears that applicant was also involved in the said crime.
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> Whether applicant was involved in conspiracy or he bonafidely without knowing the fact that power of attorney produced by co-accused Ashok Dayya is forged executed the sale deed of suit house in favour of co-accused Ashok Dayya is a matter of fact which requires evidence to decide. Prima facie involvement of applicant in the crime appears from the charge-sheet and case dairy statement of witnesses, so no question of quashing of FIR arises."

4. Before proceeding further, it is important to note that the complainant filed a civil suit against five persons, namely, Gopaldas, Mangi Bai, Nirmlabai, Ashok Kumar and Manager Housing Board, Housing and Infrastructure Development Board Division, Ratlam, M.P. bearing

No.99A/2014 on 5th May, 2014 which was on the file of the learned Vth Civil Judge, Grade-2, Ratlam, contending *inter alia* as follows :-

> "4. That after the execution of the agreement to sell by the defendant No.2 and 3 in favour of the defendant No.1 on 17.12.1994 in respect of the house No.90, situated in the Deendayal Nagar on receipt of the amount of Rs. 19,000/- (Nineteen Thousand, the defendant No.2 and 3, found that it was agreed that after the registration of the sale deed to be executed in favour of defendant No.2 and 3, the defendant No.1 executed a general power of attorney in favour of the plaintiff on 27.01.1995. According to it, by making the payment of the money which is due to the defendant No.5, the defendant No.1 informed the defendant No.1 & 5 that the registry of the sale deed may be executed properly in favour of the plaintiff in respect of the House No.90, Deendayal Nagar for which today the defendant No.1, 2 and 3 have also indicated their consent in writing in the presence of the defendant No.5."

It was prayed therein that the defendants, namely, Gopaldas, Mangi Bai and the Manager of the Housing Board among others should, in compliance with the agreement dated 17th December, 1994, get the sale deed registered in respect of the property, the subject matter of dispute in favour of the plaintiff, directly; and further that an injunction be issued against the defendants to not, either personally or through any other person, transfer the disputed property to a third party.

5. The learned Civil Judge by the judgment dated 5th December, 2023 in the suit for specific performance and declaration of the sale deed dated 30th January, 2014 as "illegal and zero" found that none of the substantive issues were proved. The suit was as such dismissed.

6. Before us it is submitted *inter alia* that: -

(a) the execution of the sale deed was reasonably connected with the official duty of the appellant and the same was done after obtaining a legal opinion from the counsel of the Housing Board.

(b) the impugned order is contrary to the settled law in ***V.Y. Joshi & Anr. v. State of Gujarat***[4], wherein it has been held that in a dispute which is essentially civil in nature, a complaint/FIR should be quashed. Observations similar in nature have been made in ***Mohd. Ibrahim v. State of Bihar***[5].

(c) since the act carried out by the appellant was in connection with his official duty, any such action would be protected by Sections 82 and 83 of the M.P. Housing Board Act, 1972, which is akin to Section 197 Cr.P.C.

(d) in view of the finding in ***Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr.***[6] that transfer of immovable property by way of sale can only be by deed of conveyance duly stamped and registered, as required by law, the claim of the complainant on the basis of an

[4] (2009) 3 SCC 78
[5] (2009) 8 SCC 751
[6] (2012) 1 SCC 656

unregistered agreement to sell and Power of Attorney would not be entertained and investigated for no legal title accrued in his favour.

(e) there is no *mens rea* on the part of the appellant and the allegations against him are entirely unsubstantiated by record. Further, the present criminal complaint has been instituted against the appellant after superannuation from service causing grave injury to the reputation and mind of the appellant.

(f) two other cases, being M.Cr.C.No.374/2017 arising out of Crime No.269/2016 by judgment dated 27th January, 2017 and M.Cr.C.No.3650/2017 arising out of Crime No.242/2016 by judgment dated 15th May, 2017, were decided in favour of the appellant and the subject First Information Reports and other subsequent proceedings were quashed.

7. We have heard the learned counsel for the parties and perused the record. The only point to be considered is whether the appellant as an employee of the Housing Board had *prima facie* involvement in the alleged forgery and cheating committed in connection with the property which was sought to be registered in the name of a particular person by way of a Power of Attorney.

8. The Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972[7], in its Chapter VIII and onwards describes the functions and duties of the Board. Chapter X deals with the acquisition and disposal of land. So, the power of the Housing Board to transfer the land to Gopaldas cannot be disputed; what is to be seen is as to whether the ingredients of the Section under which the appellant stands charge-sheeted are *prima facie* attracted against him.

9. Prior to doing so, we must also appreciate the submission on behalf of the appellant that his action is protected under Section 83 of the Adhiniyam, 1972. It reads : -

> "83. Protection of action taken in good faith - No suit, prosecution or other legal proceeding shall lie against the State Government the board or committee thereof or any officer or servant of the State Government or the board for anything which is in good faith done or intended to be done in pursuance of this Act, rule or regulation or byelaw made there-under."

10. As noted above, it is submitted that this provision is similar to Section 197 of Cr.P.C. It reads 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 officer 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-
>
> (a) ....;
>
> (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 :

[7] Hereinafter, 'Adhiniyam, 1972'

> [*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.
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> [*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.]
>
> (2) ...
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> (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.
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> (3-A) .....
>
> (3-B) .....
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> (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."

In ***Manohar Nath Kaul v. State of Jammu & Kashmir***[8] this Court considered earlier precedents on the application of this Section in the following terms.

> "**9.** In *B. Saha* v. *M.S. Kochar* [(1979) 4 SCC 177 : 1979 SCC (Cri) 939 : (1980) 1 SCR 111 : 1979 Cri LJ 1367] , a three-Judge Bench dealt with the same submission advanced on behalf of certain officers of the Customs Department convicted for offences punishable under Sections 120-B, 166 and 409 of the Penal Code. Sarkaria, J. speaking for the court observed: [SCC para 18, p. 185: SCC (Cri) p. 946]
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> > "In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by

[8] (1983) 3 SCC 429

> the public servant either in his official capacity or under colour of the office held by him."

The rule in *Amrik Singh case* [(1970) 2 SCC 56 : 1970 SCC (Cri) 292 : AIR 1970 SC 1661 : (1971) 1 SCR 317 : 1970 Cri LJ 1401] was quoted with approval. It was observed: [SCC para 17, pp. 184-85: SCC (Cri) pp. 945-46]

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

We are of the definite view that the rule quoted above from *Amrik Singh case* [(1970) 2 SCC 56 : 1970 SCC (Cri) 292 : AIR 1970 SC 1661 : (1971) 1 SCR 317 : 1970 Cri LJ 1401] correctly lays down the legal proposition as to invocability of the protection under Section 197(1) of the Code. The observations of Imam, J. in *Satwant Singh case* [AIR 1955 SC 309 : (1955) 1 SCR 1302 :1955 Cri LJ 865] that there could be no hesitation in saying that where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offence has no necessary connection between it and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences, is also the correct exposition of the law."

The scope and ambit of Section 197 Cr.P.C. was succinctly recorded in ***Shambhoo Nath Misra v. State of U.P. & Ors.***[9] :

> **"4.** Section 197(1) postulates that "when any person who is … 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" of the appropriate Government/authority. The essential requirement postulated for the sanction to prosecute the public servant is that the offence alleged against the public servant must have been done while acting or purporting to act in the discharge of his official duties. In such a situation, it postulates that the public servant's act is in furtherance of the performance of his official duties. If the act/omission is integral to the performance of public duty, the public servant is entitled to the protection under Section 197(1) of CrPC. Without the previous sanction, the complaint/charge against him for the alleged offence cannot be proceeded with in the trial. The sanction of the appropriate Government or competent authority would be necessary to protect a public servant from needless harassment or prosecution. The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the honest officer. The requirement of the sanction by competent authority or appropriate Government is an assurance and protection to the honest officer who does his official duty to further public interest. However, performance of official duty under colour of public authority cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime. The Court to proceed further in the trial or the enquiry, as the case may be, applies its mind and records a finding that the crime and the official duty are not integrally connected."

Of more recent vintage is the judgment of this Court in ***A. Sreenivasa Reddy v. Rakesh Sharma & Anr.***[10] The application of the section is referred to thus:

> "**41.** Sub-section (1) of Section 197CrPC shows that sanction for prosecution is required where 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 Norhto have been committed by him while acting or purporting to act in discharge of his official duty. Article 311 of the Constitution lays down that no person, who is a member of a civil service of the Union

[9] (1997) 5 SCC 326
[10] (2023) 8 SCC 711

> or State or holds a civil post under the Union or State, shall be removed by an authority subordinate to that by which he was appointed. It, therefore, follows that protection of sub-section (1) of Section 197CrPC is available only to such public servants whose appointing authority is the Central Government or the State Government and not to every public servant."

11. Having considered the application of Section 197, as above, we are of the view that the submission of the appellant bears merit and, therefore, deserves to be accepted, for the appellant's official duty would be in furtherance of the act and, therefore, would be covered by wordings of Section 83 of the Adhiniyam, 1972. There is no inkling in the slightest, apart from alleging connivance to suggest that the appellant had played a role, in dereliction of his duty. That apart, there are further reasons as to why the High Court appears to have erred in refusing to quash the subject criminal proceedings. They are discussed in the subsequent paragraphs.

12. The ingredients of Section 420 IPC as described in ***Vijay Kumar Ghai v. State of W.B.***[11] are:

> **"34.** Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.
>
> **35.** To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:
>
> (*i*) The representation made by the person was false.

[11] (2022) 7 SCC 124

(*ii*) The accused had prior knowledge that the representation he made was false.

(*iii*) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

(*iv*) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed."

There is nothing on record to suggest, even *prima facie*, that any of the above-said ingredients are met in the case of the present appellant. No intent can be hinted to, where the appellant had willfully, with the intent to defraud, acted upon the allegedly forged Power of Attorney. Neither has anything been brought in the chargesheet upon completion of the investigation to show that the requirements of Section 120-B have been met. Nor that the appellant had any information or knowledge about the subject Power of Attorney being forged. For the ingredients of this section to be established, ***Bilal Hajar v. State***[12], records as follows: -

"**31.** The expression "criminal conspiracy" was aptly explained by this Court in *E.G. Barsay* v. *State of Bombay* [*E.G. Barsay* v. *State of Bombay*, (1962) 2 SCR 195 : AIR 1961 SC 1762 : (1961) 2 Cri LJ 828] . The learned Judge Subba Rao, J. (as his Lordship then was and later became CJI) speaking for the Bench in his distinctive style of writing said : (AIR p. 1778, para 31)

> "*31*. … The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts."

32. Therefore, in order to constitute a conspiracy, meeting of minds of two or more persons to do an illegal act or an act by illegal means is a must. In other words, it is sine qua non for invoking the plea of

[12] (2019) 17 SCC 451

> conspiracy against the accused. However, it is not necessary that all the conspirators must know each and every detail of the conspiracy which is being hatched and nor is it necessary to prove their active part/role in such meeting."

Sections when put into a chargesheet, cannot be based on bald assertions of connivance, there must be a substance which is entirely lacking in the present case.

13. If the intent is on the face of it is absent *qua* one of the offences in the same transaction, it is absent in respect of the other offence as well, *viz.*, Section 467, 468.

14. When examining a prayer for quashing, what is to be considered by this Court has been laid down most notably in ***State of Haryana v. Bhajan Lal***[13]**.** The principle as applicable in this case is:

> "102...
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code..."

As the discussion in the previous paragraphs would evidence, no intention whatsoever could be attributed to the present appellant, and in the absence of

[13] (1992) Supp (1) 335

any intention attributable to him, no criminal offence can be made out. Further, the FIR and other materials are unable to disclose any cognizable offence, and therefore, would fall into the first and second criterion discussed in the landmark judgment.

15. In view of the aforesaid, the impugned judgment passed by the High Court of Madhya Pradesh, Jabalpur (Bench at Indore) dated 28th April, 2017 passed in Misc. Criminal Case No.12383 of 2016, is quashed and set aside. The appeal is allowed. All proceedings arising from the subject FIR and subsequent proceedings in Crime No.241 of 2016 stand closed.

Pending application(s), if any, shall stand disposed of.

……J.
(C.T. RAVIKUMAR)

……J.
(SANJAY KAROL)

New Delhi
2nd January, 2025.