Om Prakash Yadav vs Niranjan Kumar Upadhyay on 13 December, 2024

2024 INSC 979 REPORTABL

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 5267-5268 OF 2024
(Arising out of S.L.P. (Crl.) Nos. 8239-8240 of 2018)

OM PRAKASH YADAV …APPELLANT(S

VERSUS

NIRANJAN KUMAR UPADHYAY & ORS …RESPONDENT(S)

JUDGMENT

J.B. PARDIWALA, J. :-

1. Leave granted.

2. These appeals arise out of the common Judgment and Order passed by a learned Single Judge of the High Court of Judicature at Allahabad dated 19.04.2018 in Criminal Misc. Writ Application Nos. 4080 of 2009 and 32494 of 2009 respectively filed by the respondent nos. 1, 3, 4 and 5 respectively under Section 482 of the Code of Criminal Procedure, 1973 (for short, the "CrPC") whereby the High Court allowed the applications and quashed the proceedings of Case No. 67 of 2008 (State vs. Niranjan Kumar Upadhyay) as well as Case No. 67-A of 2009 (State vs. Ram Prakash Gunkar and others) pending before the CJM, Firozabad, both arising out of Case Crime No. 617 of 2007 registered for the offence punishable under Sections 147, 148, 149, 307, 302, 201 and 120-B respectively of the Indian Penal Code, 1860 (for short, the "IPC") with the Dakshin Police Station, District Firozabad, Uttar Pradesh.

A. FACTUAL MATRIX

3. On 12.10.2007, at 09:15 am, Om Prakash Yadav (hereinafter, the "appellant") lodged a First

Information Report (hereinafter, "FIR") as Case Crime No. 617 of 2007 for the offence punishable under Sections 147, 148, 149, 302 and 307 of IPC respectively with the Dakshin Police Station, Firozabad, Uttar Pradesh, against Surender Singh Gurjar, Veerbhan Gurjar, Ashok Dixit, Pappu Dixit, Sanjay Dixit and three others. The FIR alleged that the appellant's brother, Suman Prakash Yadav who was a teacher at the Tilak Inter College, Firozabad, was killed and his brother's son Harsh aged about 4 ½ years was grievously injured by the aforesaid accused persons by indiscriminately firing with their handguns near the Suhagnagar Crossing, at 08:30 am, on 12.10.2007. The appellant claimed that the incident was witnessed by him and several others.

4. On the same day, another FIR was registered as Case Crime No. 967 of 2007 at the Murar Police Station, Gwalior, Madhya Pradesh, for the offence punishable under Section 34 of the Madhya Pradesh Excise Act, 1915 (hereinafter, the "Excise Act") against Ashok Dixit who is the main accused of Case Crime No. 617 of 2007. The FIR which was lodged by Head Constable Ram Baran Singh Yadav (hereinafter, "respondent no.5") stated that based on the information received from an informant while patrolling the area, the accused Ashok Dixit was arrested for carrying 12 bottles of illegal foreign liquor near the Thatipur Crossing. It was stated therein that the respondent no. 5 along with A.S.I. Ram Prakash Gunkar (hereinafter, "respondent no. 4") and Head Constable Vijay Bahadur Singh (hereinafter, "respondent no. 3") of the Thatipur Chauki, Murar Police Station, had seized the illegal liquor and arrested the accused at around 09:30 am on 12.10.2007. It was further added that the accused, Ashok Dixit, was later released on bail by the Station House Officer (hereinafter, "SHO"), D.S. Khushawa of the Murar Police Station, on the same day, upon furnishing the necessary surety since the offence under Section 34 of the Excise Act was a bailable one. On 26.10.2007, the concerned IO is said to have submitted a Charge Sheet in connection with Case Crime No. 967 of 2007 against Ashok Dixit before the Chief Judicial Magistrate (hereinafter, "CJM"), Gwalior.

5. The Investigating Officer (hereinafter, "IO") at Dakshin, Firozabad undertook further investigation and recorded the statements of several witnesses under Section 161 CrPC in connection with Case Crime No. 617 of 2007. On 05.01.2008, the Charge Sheet No. 3 of 2008 was submitted before the CJM, Firozabad, against 12 persons namely Ashok Dixit, Pappu Dixit, Sanjay Dixit, Surender Singh Gurjar, Veerbhan Gurjar, Sandeep, Swadesh Bhardwaj, Ashu, Suresh, Pancham, Rajesh and Devender. However, the charge sheet stated that the investigation against Niranjan Kumar Upadhyay (hereinafter, "respondent no. 1"), respondent no.3, respondent no. 4, respondent no. 5 and two other individuals in regard to the FIR registered for the offence under Section 34 of the Excise Act in Murar, Gwalior allegedly for the purpose of shielding the accused, Ashok Dixit, was still pending.

6. Subsequently, on 23.01.2008, the IO at Dakshin, Firozabad recorded the statements of SHO D.S. Khushawa, respondent no. 3, respondent no. 4 and respondent no. 5 respectively of the Murar Police Station, Gwalior under Section 161 of CrPC.

7. Soon thereafter, on 30.01.2008, the IO at Dakshin, Firozabad moved an application before the CJM, Gwalior, Madhya Pradesh, requesting that the proceedings in Case No. 15003 of 2007 relating to the Case Crime No. 967 of 2007 under Section 34 of the Excise Act filed against the accused

Ashok Dixit, pending before him, be stayed. The application alleged that the respondent no. 1 who was posted in Gwalior as Town Inspector (for short, "TI") was a relative of the accused Ashok Dixit. It was further alleged that the respondent nos. 1, 3, 4 and 5 respectively had conspired to shield the accused from the offence of murder by creating a bogus case under Section 34 of the Excise Act with the sole object of providing the accused with an alibi for the crime alleged to have been committed in Firozabad. The incident in Firozabad occurred at 08:30 am while the incident in Gwalior occurred at 09:30 am on the same day. The distance between Gwalior and Firozabad being 160 kilometers, the same could not have been covered in a duration of one hour by road. The application stated that, since the accused, Ashok Dixit, might confess his guilt in connection with the offence under Section 34 of the Excise Act with a view to save himself from the offence of murder, the proceedings in Case Crime No. 617 of 2007 pending before the CJM, Firozabad might get adversely affected if the proceedings in Case No. 15003 of 2007 were allowed to be continued.

8. Upon due consideration of the aforesaid application, the CJM, Gwalior vide its order dated 05.02.2008, directed the SHO of the Murar Police Station, Gwalior, to furnish a report before the Court. On 12.02.2008, the statements of respondent nos. 3, 4 and 5 respectively, were recorded by the SHO of the Murar Police Station, Gwalior and an enquiry report was furnished on 17.02.2008 before the CJM, Gwalior. Upon perusal of the enquiry report, the CJM, Gwalior vide its order dated 23.02.2008 rejected the application dated 20.01.2008 filed by the IO at Dakshin, Firozabad, as being baseless.

9. On 14.04.2008, the IO at Dakshin, Firozabad filed an application before the CJM, Firozabad for the issuance of non-bailable warrant against the respondent nos. 1, 3, 4 and 5 respectively along with two other persons. In pursuance of the said application, on 21.04.2008, the CJM, Firozabad issued a non-bailable warrant against the aforesaid 6 accused which included the respondent nos. 1, 3, 4 and 5 respectively, herein. However, it is the case of the IO at Firozabad that the respondent nos. 1, 3, 4 and 5 were absconding and therefore, proceedings under Sections 82 and 83 CrPC respectively were also initiated and completed against them.

10.On 02.05.2008, the IO at Dakshin, Firozabad filed an application before the D.I.G., Gwalior, Madhya Pradesh through the D.I.G., Agra, Uttar Pradesh, requesting sanction for prosecution of the respondent nos. 1, 3, 4 and 5 respectively. Further, on 07.05.2008, the Superintendent of Police, Firozabad, also sent a letter to the D.I.G., Gwalior, requesting for the sanction for prosecution under Section 197 CrPC so that the respondents could be charge- sheeted.

11.In the meantime, the respondent no.1 preferred Criminal Misc. Writ Petition No. 10181 of 2008 before the High Court of Allahabad and vide order dated 23.07.2008, the arrest of respondent no. 1 was stayed.

12.On 30.07.2008, the Superintendent of Police, Firozabad, addressed one another letter to the D.I.G., Gwalior in the form of a reminder to accord sanction under Section 197 CrPC for prosecuting the respondents herein. However, on 02.08.2008, the D.I.G., Gwalior replied to the Superintendent of Police, Firozabad, informing him that sanction for prosecution cannot be granted till the disposal of the trial in connection with Case Crime No. 967 of 2007 registered at the Murar Police Station,

Gwalior for the offence under Section 34 of the Excise Act.

13.On 28.08.2008, the appellant filed a Misc. Criminal Case. No. 5971 of 2008 under Section 482 CrPC before the High Court of Madhya Pradesh at Gwalior for quashing the criminal proceedings concerning Case No. 15003 of 2007 arising out of Case Crime No.967 of 2007 registered for the offence under Section 34 of the Excise Act pending before the Court of CJM, Gwalior. In the alternative, it was prayed that the proceeding be stayed till a decision is arrived at in the case pending against Ashok Dixit before the CJM, Firozabad, concerning Case Crime No. 617 of 2007. The High Court vide its order dated 25.08.2009 stayed the proceedings in Case No. 15003 of 2007 by observing as follows:

> "12. In the light of the above legal position, the Appellant who is a complainant in the criminal case in connection with Crime No.617 of 2007 registered against respondent No.2 at Firozabad has locus standi to file this petition under section 482 of Cr.P.C. Now legal aspect and circumstances of the case is to be considered. Suppose for the sake of argument, if respondent No.2 admits his guilt in the case of Excise Act pending in the Court of CJM Gwalior what will be its effect?

He will have a good ground of alibi that at the time of alleged murder of Appellant's brother he was not present at Firozabad but was present at Gwalior which is 160 Kms. away from Firozabad. So it will cause a great prejudice in that case and on the other hand, in the interest of justice, if proceedings pending in the court of CJM Gwalior are stayed, it will not cause any prejudice to respondent No.2. Moreover, it will avoid conflicting judgments of two Courts. Therefore, it is good case for invoking inherent powers of the court.

13. Considering the facts and circumstances of the case, petition is allowed and further proceedings pending in the court of CJM Gwalior in connection with Excise. Act pending in the CJM Gwalior concerning Case No.15003 of 2007 are hereby stayed till disposal of the Criminal Case pending at Firozabad concerning Crime No.617 of 2007." (emphasis supplied)

14.After a period of almost one year, on 25.10.2008, the IO at Dakshin, Firozabad recorded the statements of two persons i.e., Ramesh Yadav and Barelal under Section 161 CrPC. Both stated that they had witnessed the respondent no.1 being directly involved in the creation of a false case under Section 34 of the Excise Act in order to provide the accused Ashok Dixit the benefit of an alibi. Soon thereafter, on 03.11.2008, a supplementary Charge Sheet No. 3A of 2008 in case Crime No. 617 of 2007 was filed against the respondent no. 1 for the offence punishable under Sections 147, 148, 149, 307, 302, 201 and 120-B IPC respectively for being involved in hatching a conspiracy of murder that occurred in Firozabad. It was the case of the IO at Firozabad that the Charge Sheet was filed since he had found out that the respondent no. 1 was not posted at the Murar Police Station, Gwalior at the time of the arrest of Ashok Dixit for the offence under Section 34 of the Excise Act and therefore, the provision of sanction under Section 197 CrPC would not be attracted against the respondent no. 1. It is pertinent to observe here that it is the case of the respondent no. 1 herein that the Charge Sheet No. 3A of 2008 was backdated to 03.11.2008 when in fact it was actually filed on 24.11.2008 before the Magistrate.

15. The mother of respondent no.1, while alleging that the appellant was trying to falsely implicate the respondent no. 1 in the case of murder, moved an application before the D.I.G., Firozabad, requesting that the investigation be transferred from the Dakshin Police Station to some other police station. The D.I.G., Firozabad vide order dated 11.11.2008 directed the Senior Superintendent of Police, Firozabad (for short, "S.S.P.") to look into the matter. Thereafter, the S.S.P. called for a status report on the case from the Circle Officer vide letter dated 14.11.2008. The status report submitted by the Circle Officer revealed that while the respondent no.1 had obtained a stay on his arrest from the High Court, the arrest of the other accused remained pending and the investigation was still going on. Upon consideration of the same, the S.S.P., Firozabad, vide order dated 20.11.2008 transferred the investigation from the Dakshin Police Station to the Uttar Police Station at Firozabad, with immediate effect.

16.The CJM, Firozabad took cognizance of the Charge Sheet No. 3A of 2008 vide order dated 24.11.2008. Immediately, on 28.01.2009, the respondent no. 1 preferred Criminal Misc. Application No. 4080 of 2009 under Section 482 CrPC before the High Court of Allahabad seeking to quash the proceedings in Case No. 67 of 2008 (State vs. Niranjan Kumar Upadhyay) arising out of the above charge sheet in Case Crime No. 617 of 2007, pending before the CJM, Firozabad.

17.Later, on 25.02.2009, the Charge Sheet bearing No. 30 of 2009 was filed in the case of the respondent nos. 3, 4 and 5 respectively for the offence under Sections 147, 148, 149, 307, 302, 201 and 120-B IPC respectively for being involved in the conspiracy to commit murder of the appellant's brother at Firozabad. The CJM, Firozabad took cognizance of the same vide order dated 10.08.2009. On 29.11.2009, the respondent nos. 3, 4 and 5 respectively also preferred an application being the Criminal Misc. Application No. 32494 of 2009 under Section 482 CrPC before the High Court of Allahabad seeking to quash the proceedings of Case No. 67A of 2009 (State vs. Ram Prakash Gunkar and Ors.) arising out of the said charge sheet in Case Crime No. 617 of 2007 pending before the CJM, Firozabad.

18.During the pendency of the aforesaid two applications filed under Section 482 CrPC before the High Court, the Court of Additional District and Sessions Judge, Firozabad, completed the Sessions Trial No. 753 and 753A of 2008 respectively and vide the judgment & order dated 10.07.2015, held all the 12 accused, including Ashok Dixit, guilty of the offences under Sections 147, 148, 149, 307, 302 and 120-B IPC with which they were charged. The relevant observations made by the Trial Court are reproduced hereinbelow:

> "...The "plea of alibi" taken by accused Ashok Dixit that on the day of incident he was lodged in jail u/s 34, Excise Act at P.S. Murar, district Gwalior was with the inconsistent report of the Murar police officials and after investigation I.O. has submitted its report to SSP, Gwalior and JM, Gwalior and stated that the case was false. The above mentioned police officials have been suspended after conducting a departmental investigation also they have been named for conspiring the death along with accused Ashok Dixit in the charge sheet that has been presented before CJM, Firozabad in which they have been charged u/s 302, 120B I.P.C... It is correct that the distance of 160 kilometres cannot be covered in one hour and if accused Ashok Dixit

was at Murar, Gwalior at 9.30 a.m., then he cannot be involved in the commission of incident at Firozabad at 8.30 a.m. It was contended in this regard on behalf of the prosecution that accused Ashok Dixit is a cunning criminal. He showed his presence there colluding with Murar Police station, Gwalior in order to escape himself from the offence of murder. The investigator SHO Shri Baldhari Singh made enquiries after going there, then the whole matter was found forged and the investigator gave an application to SSP Gwalior in this regard and also submitted an application before JM Gwalior Madhya Pradesh and keeping the investigation in progress, it was found that in order to save accused Ashok Dixit from the heinous crime like murder, the forged arrest and his release on bail has been shown by the police of Murar police station. SSP Gwalior, on investigation, finding the whole case forged, has suspended all the officials involved in the said matter and initiated departmental inquiry against them and after collecting the evidence in the said case, a charge sheet has been filed in the court of CJM Firozabad against the said police officials Niranjan Upadhyay, T.I. Police Station Murar, Gwalior and Shailendra Singh and Triloki Gaur and ASI P.P. Gunkar, Head constable Vijay Bahadur and Head Constable. Rambaran Yadav under Section 147, 148, 149, 307, 302, 201, 120B IPC with regard to give cooperation in the conspiracy of murder under Section 120B IPC. A case No. 67 A/2008 State Versus Niranjan and others is pending in that regard in the court of CJM Firozabad and the warrant of the arrest of the accused persons have been issued. The said file pending in the court of CJM was summoned on behalf of the prosecution in this regard, which is available on the file of the instant session trial which makes it clear that accused Ashok Dixit has shown his presence at 9.30 a.m. on the day of incident showing his arrest under Section 34 of Excise Act in order to escape from the case of murder of Suman Prakash colluding with the police officials of police station Murar, District Gwalior, Madhya Pradesh which was found forged in the investigation and charge sheet has been filed against the said police officials involving them in the conspiracy of murder and in order to save accused Ashok Dixit from punishment, the case of the same is pending in the court of CJM, Firozabad and warrant of arrest against all the police officials have been issued and SSP Gwalior has suspended them and departmental inquiry has been initiated against them. All these police officials are absconding. Arrest warrants have been issued against them by CJM Court, Firozabad. The, copy of charge sheet of Case No.67 A/2008 State Versus Niranjan and others pending in the court of CJM has also been filed on record behalf of the prosecution. The proceedings of case No.15003/2007 State Versus Ashok Dixit under Section 34 of Excise Act, police Station Murar pending before the CJM Court has been stayed by order dated 25.08.2009 by the Hon'ble High Court, bench at Gwalior passed in Misc. Case No.5971. The copy of the order passed by the Hon'ble High court bench at Gwalior is filed on record from 613B/25 to 613B/30. SLP has been filed against the said order before the Hon'ble Supreme court which was not admitted for hearing, the copy of the same is filed on record at 613B/31, Therefore, no profit of case under Section 34 of Excise Act cannot be given to accused Ashok Dixit and his presence at Murar, District Gwalior at the time of incident under the case of 34 Excise Act has been found forged and the accused has made a forged plea of alibi

colluding with the police officials." (emphasis supplied)

19.The High Court at Allahabad heard the Criminal Misc. Writ Application Nos. 4080 of 2009 and 32494 of 2009 analogously and disposed them vide the common Judgment and Order dated 19.04.2018. The High Court quashed the proceedings in Case Nos. 67 of 2008 and 67A of 2009 respectively essentially on the ground that sanction to prosecute the respondent nos. 1, 3, 4, and 5 respectively under Section 197 CrPC was necessary & since it had not been obtained, the trial cannot proceed. The relevant observations are reproduced hereinbelow:

> "Admittedly, the applicants are public servant and case was registered under Section 34 Excise Act against main accused of the murder in the discharge of public duty but the sanction to prosecute for the offence committed at Firozabad was not granted by the State of M.P. to prosecute the applicants for the offence committed within the jurisdiction of the Police Station, Dakhin at Firozabad (U.P.) as is evident from the Annexure SA-I and SA-II to the supplementary affidavit. In the above circumstances, it ought not to be proper to allow the proceedings to be continued against the applicants and in case, the proceeding is allowed to continue against the applicants, it would be nothing but misuse of process of law. In view of what has been submitted and discussed above, the applications have substance and are liable to be allowed. Accordingly, the applications are allowed and the proceedings pending before CJM, Firozabad as Case No. 67 of 2008 (State Vs. Niranjan Kumar Upadhyay) as well as Case No. 67A of 2009 (State Vs. Ram Prakash Gunkar and others) in connected application arising out of Case Crime No. 617 of 2007 under Sections 147, 148, 149, 307, 302, 201, 120B IPC, P.S. Dakshin, District Firozabad are hereby quashed." (emphasis supplied)

20.In such circumstances referred to above, the appellant (complainant) is here before this Court with the present appeal.

B. SUBMISSIONS ON BEHALF OF THE APPELLANT

21.Mr. Ravindra Singh, the learned senior counsel appearing for the appellant submitted that the plea of Alibi which was taken by the accused Ashok Dixit on the ground that his arrest in connection with the offence under Section 34 of the Excise Act was effected on 12.10.2007, at 09:30 am, by the officials of the Murar Police Station, Gwalior, Madhya Pradesh, has been appropriately considered by the Trial Court at Firozabad in Sessions Trial No. 753 and 753A of 2008. However, the said plea of alibi was outrightly rejected by the Trial Court by way of its well-reasoned judgment. The Trial Court categorically observed that the accused Ashok Dixit in connivance with the police officials of the Murar Police Station, Gwalior had managed to get a false case registered under Case Crime No. 967 of 2007 related to Section 34 of the Excise Act. The Trial Court had further observed that during the investigation, the presence and arrest of Ashok Dixit in Murar, Gwalior was found to be false & bogus and therefore, charge sheet came to be filed against those police officials for acting in collusion with Ashok Dixit. Furthermore, those police officials have also been suspended and a departmental enquiry has been initiated against them. Therefore, it was submitted that the

respondent no. 1 cannot assert that he has been erroneously implicated in Case Crime No. 617 of 2007 registered for the offence under Sections 147, 148, 149, 307, 302, 201 & 120-B of IPC with the Dakshin Police Station, Firozabad, Uttar Pradesh.

22.The counsel submitted that the High Court fell in serious error while passing the impugned order. The High Court could be said to have travelled beyond its jurisdiction by quashing the criminal proceedings against the respondents on the ground that the Trial Court has already decided the case against Ashok Dixit and the other accused. The Trial Court in Sessions Trial Nos. 753 and 753A of 2008 respectively arising out of Case Crime No. 617 of 2007 held Ashok Dixit guilty of the offence of murder of the appellant's brother.

23. The counsel submitted that the High Court erroneously quashed the criminal proceedings against the respondents saying that the accused respondents being public servants, the sanction to prosecute for the alleged offence is a must. It was submitted that the act of hatching a conspiracy to commit murder and creating a plea of alibi by instituting a false case, cannot be said to be done in the exercise of discharge of official duty. It was further submitted that no sanction is required under Section 197 CrPC to prosecute an erring Government official/respondent no.1 herein for the reason that the respondent no. 1 was not posted at the Murar Police Station, Gwalior where the Case Crime No. 967 of 2007 was registered.

24.It was also submitted that the respondent no. 1 had managed with the police officials of the Murar Police Station, Gwalior, to get a false FIR being Case Crime No. 967 of 2007 registered under Section 34 of the Excise Act and thereby falsely showed the presence of Ashok Dixit at Murar, Gwalior on 12.10.2007 at 09:30 am i.e., on the same day on which the Case Crime No. 617 of 2007 was registered at the Dakshin Police Station, Firozabad in respect of the murder of the appellant's brother. Furthermore, the respondent no. 1 had also influenced the other respondents to release a person under the Excise Act from the Thatipur Chowki of the Murar Police Station without producing the said person before the concerned court, in order to save Ashok Dixit.

25.The learned counsel relied upon the Police statements of Ramesh Yadav and Barelal dated 25.10.2008. They as independent witnesses have categorically stated that while they were at Thatipur, Gwalior, "Niranjan Upadhyay came out from car along with other person and said that Ashok Dixit you do not worry, I will protect you from murder case but you follow me and starts roaming in Thatipur, Gwalior along with 10-12 cartons of whisky….". The same makes it clear that the respondent no. 1 was also actively involved in the lodging of a false FIR.

26.In such circumstances referred to above, the learned counsel submitted that there being merit in his appeal, the same may be allowed and the impugned order passed by the High Court be set aside.

C. SUBMISSIONS OF BEHALF OF THE RESPONDENT NO. 1

27.Mr. R. Basant, the learned senior counsel appearing for the respondent no. 1 submitted that there is nothing to indicate that the respondent no. 1 was directly or indirectly responsible for the registration of Case Crime No. 967 of 2007 in any manner, since he was neither posted at the Murar

Police Station nor he had instructed any of the concerned officials to register such an FIR. In fact, the respondent no. 1 was posted at District Shivpuri which is 120 kms away from Gwalior at the time of filing the Case Crime No. 967 of 2007 on 12.10.2007.

28.The counsel submitted that the respondent no. 1 had neither filed the FIR in Case Crime No. 967 of 2007 at the Murar Police Station, Gwalior nor was he associated with the said police station in any manner. However, assuming without conceding that the said FIR was registered at the behest of respondent no. 1, sanction for prosecution with respect to Case Crime No. 617 of 2007 is required. It is an admitted fact that sanction was refused by the D.I.G., Gwalior vide its letter dated 02.08.2008.

29.The counsel further submitted that there are bleak chances of conviction of the respondent no. 1 for the following reasons – (a) the respondent no. 1 was not posted at the Murar Police Station, Gwalior where the Case Crime No. 967 of 2007 was registered, (b) the respondent no. 1 is 72 years old and no purpose would be served if the respondent no. 1 was made to face trial at this stage when the Case Crime No. 617 of 2007 was admittedly filed in the 2007, (c) the Trial Court has already convicted all the accused including Ashok Dixit by way of its judgment in 10.07.2015, (d) respondent no. 1 has retired from Police service in 2015 and 9 years have passed since then, (e) No departmental inquiry was initiated against respondent no. 1 for the alleged act of registration of Case Crime No. 967 of 2007 at the Murar Police Station, Gwalior, and (f) there is nothing to indicate that the respondent no. 1 is related to the accused Ashok Dixit.

30.The counsel submitted that the charge sheet should be read as a whole and there exists no circumstance or evidence to warrant any assumption of involvement of respondent no. 1 in connection with Case Crime No. 617 of 2007 for the alleged offence of conspiracy to commit murder. This is so because there are only two statements of witnesses recorded under Section 161 CrPC and such statements were recorded after a period of one year i.e., on 25.10.2008 from the date of registration of case Crime No. 617 of 2007 i.e., on 12.10.2007. These two statements are the sole basis for instituting a prosecution against the respondent ro. 1. Furthermore, the said witnesses were not examined in the trial whereby the 12 accused including Ashok Dixit stood convicted vide order dated 10.07.2015.

31.It was also submitted that there is a material contradiction in the case of the prosecution. The statements of the two witnesses i.e., Ramesh and Barelal suggest that the respondent no. 1 was seen with Ashok Dixit in Gwalior since they had verbatim deposed that they had heard respondent no. 1 telling Ashok Dixit that they would create a false plea of alibi. However, the eyewitnesses have all deposed that Ashok Dixit was present at the place of the incident in Firozabad where the firing had occurred. These two contradictory statements confirm the presence of Ashok Dixit in Firozabad and also in Gwalior and are therefore, ex-facie derogatory to each other.

32.The counsel submitted that Section 201 CrPC would not apply to the instant facts and circumstances. There is no allegation that the respondent no. 1 had conspired with the other co-accused persons for the offence of murder and the only allegation that surfaces from the charge sheet is that a false alibi was provided in order to shield Ashok Dixit by registering an FIR under the Excise Act in Gwalior. The said alleged act was made after the commission of the offence of murder

and there is nothing on record to even remotely suggest that the respondent no. 1 had knowledge about the incident of murder.

33.In light of the above, the counsel submitted that the impugned Judgment and Order of the High Court quashing the criminal proceedings against the respondent no. 1 may not be interfered with.

D. SUBMISSIONS OF BEHALF OF THE RESPONDENT NOS. 3, 4 AND 5.

34. Ms. Nanita Sharma, the learned counsel appearing for the respondent nos. 3, 4, and 5 respectively submitted that the Uttar Pradesh police was bent upon falsely implicating her clients for the offence under Sections 302 and 120-B IPC. This is evident from the following – (a) the statements of Ramesh Yadav and Barelal were recorded under Section 161 CrPC after a gap of one year from the date of the offence committed at Firozabad i.e., 12.10.2007, (b) the address of Barelal as recorded by the IO while recording his statement under Section 161 CrPC was found to be incorrect and as per the information of the Sarpanch, no person with the name of Barelal had ever lived at the said address. The permanent address of the witness Barelal was not in existence even as per the certificate given by the Parshad of the area on 28.12.2008, (c) Ramesh Yadav had also never lived at the address which was given by him to the IO during his statement recorded under Section 161 CrPC and the same was clear from the certificate issued by the Sarpanch of Bada Gaon, Murar Police Station, Gwalior.

35.The counsel also submitted that the respondent nos. 3, 4 and 5 respectively had never been named in the FIR registered in Case Crime No. 617 of 2007 nor their names were ever disclosed by any of the witnesses whose statements had been recorded by the IO under Section 161 CrPC after the commission of the offence at Firozabad. It was never pointed out that there was any conspiracy between the respondents and the main accused, Ashok Dixit. It was submitted that the respondent nos. 3, 4 and 5 respectively or their family members are neither relatives nor known to the accused, Ashok Dixit, in any manner.

36.The counsel submitted that the IO at Firozabad has falsely implicated the respondent nos. 3, 4 and 5 respectively in the murder case which occurred at Firozabad even though they had no role to play in the case. They have been implicated only because of the rivalry between the two police establishments and the refusal of the D.I.G., Gwalior to grant sanction to prosecute them. It was submitted that the respondents had only performed their duty without suspecting any kind of manipulation in both the arrest and release of Ashok Dixit because they were merely following the instructions of their superior officer i.e., the T.I. (SHO), D.S. Khushawa of the Murar Police Station.

37.The counsel in the last submitted that the High Court was justified in quashing the criminal proceedings against the respondent nos. 3, 4 and 5 for want of sanction.

E. ISSUE(S) FOR DETERMINATION

38.Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only issue that falls for our consideration is:

a. Whether the CJM, Firozabad could have taken cognizance of the Charge Sheet No. 3A of 2008 and Charge Sheet No. 30 of 2009 respectively against the respondent nos. 1, 3, 4 and 5 respectively, in the absence of the grant of sanction for prosecution under Section 197 CrPC? In other words, whether the offence or the act alleged to have been committed by the respondent nos. 1, 3, 4 and 5 respectively could be said to have been done "while acting or purporting to act in the discharge of official duty"?

F. ANALYSIS

39. Section 197 CrPC 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 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 (1 of 2014)—

(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 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, 3 [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB] 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.

(3A) 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.

(3B) 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 (43 of 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."

40. The 41st Report of the Law Commission of India contextualizes the object behind the enactment of Section 197 CrPC by pointing out that it enables the more important categories of public servants, performing onerous and responsible functions, to act fearlessly by protecting them from false, vexatious or mala fide prosecutions. Under the erstwhile Code of Criminal Procedure, 1898, the ambit of the Section was considered a bit too wide since it read – "is accused as such Judge or public servant of any offence". However, to offer more precision, the Amending Act of 1923 inserted the phrase – "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". The same has been retained in the statute books till today despite the provision undergoing several amendments over the period of time.

41.As rightly acknowledged by the Law Commission, the meaning of the word "acting or purporting to act" in Section 197 CrPC has been well settled by a legion of decisions of the Federal Court, the Privy Council and the Supreme Court and any difficulty that may be felt lies only in the actual application of the principles laid down in these decisions to the facts and circumstances of a

particular case. In other words, the question whether a particular act is done by a public servant in the discharge of his official duty is substantially one of fact, which is to be determined in the unique circumstances of each case.

42.The applicability of Section 197 CrPC has been the subject of judicial interpretation in several cases. One of the first and foremost case laws which examined the pith of the expression "any act done or purporting to be done" was the Federal Court decision in Dr. Hori Ram Singh v. The Crown reported in AIR 1939 FC 43. Their Lordships were called upon to consider the applicability of Section 270 of the Government of India Act, 1935 which albeit not identical, but was similar to Section 197 CrPC. The Court held that while the offence under Section 409 IPC as regards the criminal breach of trust by a public servant would not require consent from the Governor for it cannot be done or purported to be done in the execution of his duty, yet the offence under Section 477A IPC as regards the falsification of accounts would require the Governor's consent. The words "purported to be done" was interpreted as follows:

> "Extent of the Protection. Obviously, the section does not mean that the very act which is the gravamen of the charge and constitutes the offence should be the official duty of the servant of the Crown. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The words as used in the section are not "in respect of any official duty" but "in respect of any act done or purporting to be done in the execution of his duty." The two expressions are obviously not identical. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in the execution of the duty. The reference as obviously to an offence committed in the course of an action, which is taken or purports to be taken in compliance with an official duty, and is in fact connected with it. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction. If the act complained of is an offence, it must necessarily be not an execution of duty, but a dereliction of it. What is necessary is that the offence must be in respect of an act done or purported to be done in execution of duty, that is in the discharge of an official duty. It must purport to be done in the official capacity with which he pretends to be clothed at the time, that is to say under the cloak of an ostensibly official act, though, of course, the offence would really amount to a breach of duty. An act cannot purport to be done in execution of duty unless the offender professes to be acting in pursuance of his official duty and means to convey to the mind of another the impression that he is so acting.

> The section is not intended to apply to acts done purely in a private capacity by a public servant. It must have been ostensibly done by him in his official capacity in execution of his duty, which would not necessarily be the case merely because it was done at a time when he held such office, nor even necessarily because he was engaged in his official business at the time. For instance, if a public servant accepts as a reward a bribe in his office while actually engaged in some official work, he is not accepting it even in his official capacity, much less in the execution of any official duty, although it is quite certain that he could never have been able to take the bribe unless he were the official in charge of some official work. He does not even pretend to the person who offers the bribe that he is acting in the discharge of his official duty, but merely uses his official position to obtain the illegal gratification." (emphasis supplied)

43. His Lordship, Sulaiman, J, clarified that it is not imperative for the very act which is at the center of the charge to be the official duty of the public servant. This would lead to the inference that an offence can never be part of one's official duty and defeat the very intent behind the enactment of the provision. Instead, the essence of the provision was that the offence must be in respect of an act done or purported to be done in the execution of duty i.e., in the discharge of an official duty. Although the offence would really amount to a breach of duty, it must purport to be done in the official capacity with which the official pretended to be clothed at the time. However, it was made clear that the provision must not be applied to acts done purely in a private capacity by a public servant but only to those acts ostensibly done by him in his official capacity and in execution of his duty. Therefore, merely because the act was committed at a time when he held such office or when he was engaged in his official business would not make the section automatically applicable.

44. His Lordship, Varadachariar, J, in his concurring opinion, expressed that the question of whether or not the act complained of is one "purporting to be done in execution of his duty" as a public servant is substantially one of fact which is to be determined with reference to the act complained of along with the attendant circumstances. It would not be wise nor desirable to lay down any hard and fast tests in this regard.

45. The Judicial Committee of the Privy Council in Gill and Another v. The King reported in AIR 1948 PC 128 was faced with deciding whether sanction was required under Section 197 CrPC for the prosecution of a public servant charged with the offence of bribery and/or conspiracy to take bribes. The Court was of the opinion that it was impossible to distinguish or differentiate between S. 270 of the Government of India Act, 1935 and S. 197 CrPC, at least in relation to offences of this character. Therefore, the decision in Dr. Hori Ram Singh (supra) would be of great assistance in cases pertaining to S. 197 as well. It was observed that a public servant can only be said to act or purport to act in the discharge of his official duty, if his act is as such as to lie within the scope of his official duty. Therefore, the test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office. The relevant observations are reproduced hereinbelow:

> "A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus, a judge neither acts nor purports to act as a judge in receiving a bribe, though the judgment which he delivers may be such an act:
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> nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office" Applying such a test to the present case, it seems clear that Gill could not justify the acts in respect of which he was charged as acts done by him by virtue of the office that he held. Without further examination of the authorities their Lordships, finding themselves in general agreement with the opinion of the Federal Court in the case cited, think it sufficient to say that in their opinion no sanction under s. 197 of the Code of Criminal Procedure was needed." (emphasis supplied)

46.In Albert West Meads v. The King reported in AIR 1948 PC 156, the Privy Council echoed the view taken in Gill (supra) and held that the appellant in that case could not justify that the act of fraudulently misapplying money entrusted to his care as a public servant was an act done by him by virtue of his office.

47.In Shreekantiah Ramayya Munipalli v. State of Bombay reported in (1954) 2 SCC 992, this Court stressed that each case must be decided in its own facts. Herein, the Bench opined that Section 197 CrPC can never be applied if it is construed too narrowly since it is no part of an official's duty to commit an offence and the language of the provision must be given its true meaning. However, it is not the duty but the act which has to be examined because an official act can be performed in the discharge of official duty as well as in the dereliction of it. The relevant observations are as follows:

> "14. Now it is obvious that if Section 197 of the Criminal Procedure Code is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning. ..." (emphasis supplied)

48. In Amrik Singh v. State of Pepsu reported in AIR 1955 SC 309, the appellant was charged under Section 465 IPC for forging the thumb- impression of an individual and under Section 409 IPC for the criminal misappropriation of a certain sum. The Court opined that if the act complained of is directly concerned with the official duty of the public servant so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. This would be 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 trial and not be examined at the stage of granting sanction for prosecution. Therefore, the test as to whether sanction is necessary to prosecute a public servant will depend on whether the acts complained of are so integrally

connected with his duties as a public servant. If they do, then sanction is a requisite and there cannot be any uniform rule that an offence of criminal misappropriation or criminal breach of trust would always be outside the scope of Section 197 CrPC. The relevant observations are reproduced hereinbelow:

> "7. The result of the authorities may thus be summed up : It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but 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.
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> 8. ...In our judgment, even when the charge is one of misappropriation by a public servant, whether sanction is required under Section 197(1) will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.
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> xxx xxx xxx
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> 11. ...The result then is that whether sanction is necessary to prosecute a public servant on a charge of criminal misappropriation, will depend on whether the acts complained of hinge on his duties as a public servant. If they do, then sanction is requisite. But if they are unconnected with such duties, then no sanction is necessary.

(emphasis supplied)

49.A five-Judge Bench of this Court in Matajog Dobey v. H.C. Bhari reported in AIR 1956 SC 44 acknowledged that slightly differing tests had been laid down under Section 197 CrPC but the difference in those tests were only in language and not in substance. The Court laid down a more refined test that there must be a reasonable connection between the act done and the discharge of the official duty and 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. Therefore, what one must ascertain is whether the act and the official duty are so interrelated such that it can be reasonably postulated that it was done in the performance of the official duty, though possibly in excess of the needs and requirements of the situation. The relevant observations are as follows:

> "17. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". But the difference is only in language and not in substance. The offence alleged to have been committed must have something to do, or must be related in some manner with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation. ... xxx xxx xxx
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> 19. The result of the foregoing discussion is this : 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." (emphasis supplied)

50.Furthermore, in Dhannjay Ram Sharma v. M.S. Uppadaya and Others reported in AIR 1960 SC 745, it was clarified that the mere fact that an opportunity to commit an offence is furnished by the official duty is not such a connection of the offence with the performance of such duty, so as to justify even remotely the view that the acts complained of are within the scope of the application of Section 197 CrPC.

51.This Court in P. Arulswami v. State reported in (1967) 1 SCR 201 was also concerned with an offence under Section 409 IPC and it was opined that the act must be directly concerned and connected with the official duties of the public servant such that it could be claimed to have been done by virtue of his office. Furthermore, it is the "quality" of the act that must be emphasized on. The act must not be totally unconnected with the official duty. Only if it falls either within the scope and range of the official duties, or is in excess of it, then Section 197 CrPC would stand attracted. The Court had stated as thus:

> "...It is not therefore every offence committed by a public servant that requires sanction for prosecution under s. 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but 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. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by s. 197 of the Criminal Procedure Code will be attracted. An offence may be entirely

> unconnected with the official duty as such or it may be committed within the scope of official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable…" (emphasis supplied)

52. In Harihar Prasad Etc. v. State of Bihar reported in (1972) 3 SCC 89 the appellants were alleged to have entered into a criminal conspiracy for committing the offences of criminal breach of trust and cheating in respect of a large amount of government money earmarked for a development project. The Court opined that sanction under Section 197 CrPC would not be necessary since it is no part of the duty of a public servant while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct and observed as thus:

> "66. The next point was with regard to consent or sanction.
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> There is no doubt that in respect of B.P. Sinha consent was properly given by the Deputy Commissioner. So consent was also given in respect of N.K. Banerjee and Harihar Prasad by the Chief Secretary. This is not a case of sanction or consent under Section 196-A of the Code of Criminal Procedure. On the question of the applicability of Section 197 of the Code of Criminal Procedure, the principle laid down in two cases, namely, Shreekantiah Ramayya Munipalli v. State of Bombay [AIR 1955 SC 287] and Amrik Singh v. State of Pepsu [AIR 1955 SC 309] was as follows:
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> "It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but 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." The real question therefore is whether the acts complained of in the present case were directly concerned with the official duties of the three public servants. As far as the offence of criminal conspiracy punishable under Section 120-B, read with Section 409 of the Penal Code, 1860 is concerned and also Section 5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar." (emphasis supplied)

53. In B. Saha and Others v. M.S. Kochar reported in (1979) 4 SCC 177, the appellants were charged for the offences under Sections 409 and 120-B IPC. The Court opined that while it is not an invariable proposition of law that the act of criminal misappropriation or conversion cannot be inseparably intertwined with the performance of the official duty, yet in the facts of the present case, the alleged act of criminal misappropriation could not reasonably be said to be imbued with the color of office or having a direct connection with the duties of the appellants as public servants.

Therefore, sanction was not considered necessary. While observing so, the Court stated that the expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" must neither be construed narrowly nor widely and the right approach would be to arrive at a balance between the two extremes. Therefore, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be committed by the public servant either in his official capacity or under the color of the office held by him such that there is a direct or reasonable connection between the act and the official duty. The relevant observations are as thus:

> "17. 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. As pointed out by Ramaswami, J., in Baijnath v. State of M.P. [AIR 1966 SC 220, 227 : (1966) 1 SCR 210 : 1966 Cri LJ 179] , "it is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted."
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> 18. 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 the public servant either in his official capacity or under colour of the office held by him." (emphasis supplied)

54.This Court in State of Maharashtra v. Dr. Budhikota Subbarao reported in (1993) 3 SCC 339 elaborated on how the balance between a narrow and wide construction of Section 197 CrPC can be maintained. The Court opined that the section must be construed strictly while determining its applicability to any act or omission in the course of service and its operation has to be limited only to those acts which are discharged in the "course of duty". However, once any act or omission has been found to have been committed by a public servant in the discharge of his duty then a liberal and wide construction can be given to the particular act, so far as its official nature is concerned. For instance, a public servant is not entitled to indulge in criminal activities in the discharge of his duty and to that extent, the section must be construed narrowly and in a restricted manner. However, once it is established that the act or omission was done by the public servant while discharging his duty, then the scope of it being "official" should be interpreted such that the objective of the section is advanced in favor of the public servant.

55.In R. Balakrishna Pillai v. State of Kerala and Another reported in (1996) 1 SCC 478, the appellant who was the then Minister for Electricity for the State of Kerala was alleged to have entered into a criminal conspiracy to sell electricity to an industry in the State of Karnataka without the consent of the Government of Kerala. The Court stressed that the quality of the act must be looked into and there can be no general proposition that whenever there is a charge of criminal conspiracy levelled against a public servant, the protection under Section 197 CrPC would have no application. The question of whether the act complained of had a direct nexus with the discharge of official duties would depend on the facts of each case and it was stated as thus:

> "6. ...The question whether the acts complained of had a direct nexus or relation with the discharge of official duties by the public servant concerned would depend on the facts of each case. There can be no general proposition that whenever there is a charge of criminal conspiracy levelled against a public servant in or out of office the bar of Section 197(1) of the Code would have no application. Such a view would render Section 197(1) of the Code specious. Therefore, the question would have to be examined in the facts of each case. ..." (emphasis supplied)

> 56. In Shambhoo Nath Misra v. State of U.P. and Others reported in (1997) 5 SCC 326, allegations of fabrication of record and misappropriation of public funds were made against the accused public servant. The Court while holding that sanction was not necessary in the facts of the case re-affirmed that the public servant's act must be in furtherance of the performance of his official duties and only if the act or omission is integral to the performance of the public duty, he would be entitled to protection under Section 197 CrPC. While stating so, the Court elaborated on the objective behind the enactment of the provision and clarified that the protection of sanction is an assurance to an honest and sincere officer so that he can perform his public duty honestly and to the best of his ability. The threat of prosecution would demoralize them and therefore, the requirement of sanction by the competent authority or the appropriate Government can serve as a shield only for such honest officers who carry out their duty with an aim to further public interest. The Court also rightly cautioned that, however, such an immunity cannot be utilized by public servants to camouflage the commission of a crime under the supposed color of public office.

> 57.This Court's reasoning in State of Orissa and Others v. Ganesh Chandra Jew reported in (2004) 8 SCC 40 was further adopted in a few other landmark decisions including S.K. Zutshi and Another v. Bimal Debnath and Another reported in (2004) 8 SCC 31 and K. Kalimuthu v. State reported in (2005) 4 SCC 512. The Court in Ganesh Chandra Jew (supra) considered the scope of the expression "official duty" and stated that the protective cover of the section must not be extended to every act or omission done by a public servant in service but be restricted to only those acts or omissions which are done by a public servant in the discharge of his "official" duty. The scope can be widened further by also extending protection to those acts or omissions which are done in the "purported" exercise of "official" duty i.e., under the color of office, but not more.

58. Dr. Arijit Pasayat, J, went on to state that the protection given under Section 197 CrPC must not be viewed as limitless. This protection has certain limits and is available only when the alleged act done is reasonably connected with the discharge of his official duty and not merely a cloak for doing the objectionable act. However, if the public servant acted in excess of his official duty but there exists a reasonable connection between the act and the performance of his official duty, the excess cannot be a sufficient ground to deprive him of the protection under Section 197 CrPC. Therefore, it was re-iterated that it is the "quality" of the act which is important and such an act must fall within the scope and range of the public servant's official duty. While there cannot be any universal rule to determine whether there exists a reasonable connection between the act done and the official duty, one "safe and sure test" in this regard would be to consider if the omission or neglect on 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, the protection under Section 197 CrPC can be granted since there was every connection with the act complained of and the official duty of the public servant. The relevant observations are as follows:

"7. 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..." (emphasis supplied)

> 59. In Sankaran Moitra v. Sadhna Das and Another reported in (2006) 4 SCC 584, the appellant police officer was accused of killing the complainant's husband while carrying out a lathi-charge near the polling-

booth on an election day. While the Bench in its majority opinion had held that the appellant was acting in the discharge of his official duty, C.K. Thakker, J, in his minority opinion had stated that the act complained of had no nexus, reasonable connection or relevance to the official act or duty of such public servant and was otherwise, illegal, unlawful and high- handed. He went on to state that it is not only the "power" but the "duty" of the court to apply its mind to the factual situation before it. The Courts must ensure that on the one hand, the public servant is protected if the case is covered by Section 197 CrPC and on the other hand, that appropriate action would be allowed to be taken if the provision is not attracted and the accused is trying to take undue advantage of the section under the guise of his position as a public servant. The relevant observations are as thus:

> "67. From the aforesaid decisions, in my opinion, the law appears to be well settled. The primary object of the legislature behind Section 197 of the Code is to protect public officers who have acted in discharge of their duties or purported to act in discharge of such duties. But, it is equally well settled that the act said to have been committed by a public officer must have reasonable connection with the duty sought to be discharged by such public officer. If the act complained of has no nexus, reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an offence, he cannot get shelter under Section 197 of the Code. In other words, protection afforded by the said section is qualified and conditional.
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> 68. Mr Tulsi, no doubt, submitted that the appellant was a police officer. He was on duty. He had received a message about rioting and law and order situation at Beliaghata. He, therefore, had gone to the spot pursuant to the said message, in police uniform, in police jeep to deal with the situation.

All the ingredients of Section 197 of the Code were thus satisfied and the High Court was wrong in not applying the said provision.

69. I am unable to agree with Mr Tulsi. In my judgment, it is precisely in such cases that the Court is called upon to consider whether the public servant was acting or purporting to act in discharge of his duty or it was merely a cloak for doing illegal act under the excuse of his status as a public servant and by taking undue advantage of his position, he was committing an offence or an unlawful act. In such situations, when the question comes up for consideration before a court of law as to the applicability or otherwise of Section 197 of the Code, it is not only the power but the duty of the Court to apply its mind to the fact situation before it. It should ensure that on the one hand, the public servant is protected if the case is covered by Section 197 of the Code and on the other hand, appropriate action would be allowed to be taken if the provision is not attracted and under the guise of his position as public servant, he is trying to take undue advantage." (emphasis supplied)

60.In Choudhury Parveen Sultana v. State of West Bengal and Another reported in (2009) 3 SCC 398 the appellant's husband had suffered grievous injury in a shoot-out for which a case was registered and police investigation was undertaken. The appellant had filed a complaint before the Magistrate that the respondent no. 2 (Investigating Officer) and the co- accused visited her house under the pretext of conducting an investigation, threatened her and her husband to make a tutored statement and had also tried to obtain the husband's signature on a blank paper under threatening circumstances. While the Magistrate had taken cognizance, the High Court had quashed the proceedings for want of sanction. In such circumstances, the following observations were made:

> "18. The direction which had been given by this Court, as far back as in 1971 in Bhagwan Prasad Srivastava case [(1970) 2 SCC 56 : 1970 SCC (Cri) 292 : (1971) 1 SCR 317] holds good even today. All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 CrPC. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. As mentioned in Bhagwan Prasad Srivastava case [(1970) 2 SCC 56 : 1970 SCC (Cri) 292 : (1971) 1 SCR 317] the underlying object of Section 197 CrPC is to enable the authorities to scrutinise the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 CrPC and have to be considered dehors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned.
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> 19. In the instant case, certain deeds and acts have been attributed to Respondent 2 and another accused, which cannot be said to have been part of the official duties to be performed by Respondent 2. Hence, in our view, Respondent 2 was not entitled to the protection of Section 197 CrPC in respect of such acts." (emphasis supplied) The Court, while stating that the respondent no. 2 was not entitled to the protection under Section 197 CrPC, was of the view that if the authority which has been vested in a public servant is misused or abused for committing acts which are not otherwise permitted under the law, one cannot claim recourse under Section 197 CrPC. In such circumstances, the acts committed must be considered dehors the duties which a public servant is required to discharge or perform.

61.In Urmila Devi v. Yudhvir Singh reported in (2013) 15 SCC 624, a complaint was filed by M alleging that the appellant and R were living in an illicit relationship. Therefore, the respondent Sub-Divisional Magistrate directed the Tehsildar to enquire into the matter and also directed the DSP concerned to conduct a special investigation. It was alleged that the respondent had forcibly entered the house of the appellant at 10:00 pm with his investigation team, equipped with video

cameras, to carry out a search of the appellant's house. It was further alleged that R was forced to remove his clothes in front of the other officials and that both the appellant and R were taken to a Civil Hospital where they were forced to undergo a medical examination against their will. The medical examination of the appellant was also alleged to have been conducted by a male doctor. Furthermore, it was alleged that when the appellant and R filed a complaint against M, the respondent threatened them to withdraw the same. The Court stated that none of the acts alleged against the respondent, can by any stretch of imagination, be held to have been carried out in his capacity as an Executive Magistrate. Hence, the invocation of Section 197 CrPC was wholly uncalled for. While emphasizing that the test of direct and reasonable connection between the official duty of the accused and the acts allegedly committed by him is the true test, the Court stressed that public functionaries cannot, under the cloak of the purported discharge of official duties, resort to the harassment and humiliation of the citizens on the pretext of a complaint having been received by them. The relevant observations are reproduced hereinbelow:

> "63. 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 CrPC is available to a public servant accused of the commission of an offence. The High Court has not adverted to this test nor has it held that there existed a direct and reasonable connection between the official duty being discharged by the accused public servant and the acts committed by him. The High Court has on the contrary misdirected itself when it said that the accused had only committed an act of omission towards his official duties which entitled him to the protection of Section 197 of the Code.
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> 65. It is difficult to appreciate what the High Court meant by saying that the acts of the accused were "at best acts of omission towards official duty". It was not the case of the respondent before the High Court nor is it his case before us that the complaint filed by Maya Devi disclosed any offence which could be taken cognizance of by him as an Executive Magistrate or investigated by the police. Assuming that the complainant and R.C. Chopra were living together even when they were not married to each other, the complaint regarding any such relationship could be filed only by the wife of R.C. Chopra, or the husband of the complainant Urmila Devi. The complaint filed by Maya Devi could not provide a valid basis for the SDM, the Tahsildar or the Deputy Superintendent of Police concerned to barge into the house of the complainant, humiliate or harass her or drag her to the police station without the registration of any case or subject her to an uncalled for medical examination. The test of direct and reasonable connection between the official duty of the respondent Sub-Divisional Magistrate and the police officers concerned and the acts complained of thus fails in the present case especially because there is not even a semblance of a lawful justification forthcoming from the respondent for what he did. Entering the house of a woman, after sunset with a posse of police force, carrying video cameras conducting an unwarranted search of the house, humiliating and invading the privacy of the complainant, insulting and humiliating R.C. Chopra 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 complainant which added insult to injury, all remain unsupported by any lawful justification and have no connection with the duties that were cast upon the respondent as a public servant, even if a complaint alleging an adulterous relationship between the appellant and R.C. Chopra had been received by the SDM.

The alleged acts of the respondent cannot, therefore, be said to be in discharge of his official duties or in the purported discharge of such duties.

66. 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; nor was there any other proceeding in connection with which such conduct could be justified in law. The plea of the respondent that the prosecution was barred under Section 197 CrPC has, therefore, to be rejected." (emphasis supplied)

62. In Rajib Ranjan v. R. Vijaykumar reported in (2015) 1 SCC 513, a complaint was filed against the appellant public officials for conspiracy to create false documents. This Court had held that even while discharging official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such a misdemeanor must not be treated as an act in the discharge of his official duties in order to grant protection under Section 197 CrPC and elaborated as follows:

> "15. The sanction, however, 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 duties". In order to find out as to whether the alleged offence is committed while acting or purporting to act in the discharge of his official duty, the following yardstick is provided by this Court in Budhikota Subbarao [State of Maharashtra v. Budhikota Subbarao, (1993) 3 SCC 339 :
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> 1993 SCC (Cri) 901 : (1993) 2 SCR 311] in the following words : (SCC p. 347, para 6) "6. ... If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed."
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> 16. This principle was explained in some more detail in Raghunath Anant Govilkar v. State of Maharashtra [(2008) 11 SCC 289 : (2009) 1 SCC (Cri) 130] , which was decided by this Court on 8-2-2008 in SLP (Crl.) No. 5453 of 2007, in the following manner : (SCC pp. 298-

99, para 11) "11. '7. ... "66. ... On the question of the applicability of Section 197 of the Code of Criminal Procedure, the principle laid down in two cases, namely, Shreekantiah Ramayya Munipalli v. State of Bombay [AIR 1955 SC 287 : 1955 Cri LJ 857] and Amrik Singh v. State of Pepsu [AIR 1955 SC 309 : 1955 Cri LJ 865] was as follows : (Amrik Singh case [AIR 1955 SC 309 : 1955 Cri LJ 865] ,

AIR p. 312, para 8) '8. ... It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but 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....' The real question therefore, is whether the acts complained of in the present case were directly concerned with the official duties of the three public servants. As far as the offence of criminal conspiracy punishable under Section 120-B read with Section 409 of the Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar." [Ed. : As observed in Harihar Prasad v. State of Bihar, (1972) 3 SCC 89, 115, para 66 : 1972 SCC (Cri) 409.] ' [Ed. : Quoted from State of Kerala v. V. Padmanabhan Nair, (1999) 5 SCC 690, 692, para 7 : 1999 SCC (Cri) 1031.] "

17. Likewise, in Shambhoo Nath Misra v. State of U.P. [(1997) 5 SCC 326 : 1997 SCC (Cri) 676 : AIR 1997 SC 2102] , the Court dealt with the subject in the following manner : (SCC p. 328, para 5) "5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund, etc. can he be said to have acted in discharge of his official duties? It is not the official duty of the public servant to fabricate the false record and misappropriate the public funds, etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund, etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained."

18. The ratio of the aforesaid cases, which is clearly discernible, is that even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted. In fact, the High Court has dismissed the petitions filed by the appellant precisely with these observations, namely, the allegations pertain to fabricating the false records which cannot be treated as part of the appellants' normal official duties. The High Court has, thus, correctly spelt out the proposition of law. The only question is as to whether on the facts of the present case, the same has been correctly applied." (emphasis supplied)

63.The purpose behind the enactment of Section 197 CrPC must not be to shield corrupt officials and this was the position taken in Inspector of Police and Another v. Battenapatla Venkata Ratnam and Another reported in (2015) 13 SCC 87. Here, the respondents while working as Sub-Registrars in various offices of the State of Andhra Pradesh had conspired with stamp vendors, document writers and other staff to manipulate the registers and had gotten the documents registered with the old value of the respective properties, resulting in wrongful gain to themselves and loss to the

Government. Such acts were held to not be in the discharge of their official duty. The observations made are reproduced hereinbelow:

> "11. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue. Unfortunately, the High Court missed these crucial aspects. The learned Magistrate has correctly taken the view that if at all the said view of sanction is to be considered, it could be done at the stage of trial only." (emphasis supplied)

64. This Court in Surinderjit Singh Mand and Another v. State of Punjab and Another reported in (2016) 8 SCC 722 was faced with a factual scenario wherein an accused was allegedly arrested in a theft case by the appellant police officers on 24.06.1999 but was formally and officially shown to have been arrested only on 28.06.1999. Prosecution was initiated against the appellant officers on the basis of an FIR registered at the instance of the mother of the accused in relation to the alleged illegal detention of the accused for the period from 24.06.1999 to 28.06.1999. While holding that no sanction to prosecute was required in the circumstances of an illegal detention, this Court observed as thus:

> "23. Having given our thoughtful consideration to the contention advanced at the hands of the learned counsel for the respondents, we are of the view that the decision rendered by this Court in P.P. Unnikrishnan case [P.P. Unnikrishnan v. Puttiyottil Alikutty, (2000) 8 SCC 131 :
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> 2000 SCC (Cri) 1460] is clear and emphatic. The same does not leave any room for making any choice. It is apparent that the official arrest of Neeraj Kumar in terms of the provisions of the Code, referred to hereinabove, would extend during the period from 28-6-1999 to 30-6-1999. The above period of apprehension can legitimately be considered as having been made "while acting or purporting to act in the discharge of their official duties". The factual position expressed by the appellants is that Neeraj Kumar was not detained for the period from 24-6-1999 to 28-6-1999. His detention during the above period, if true, in our considered view, would certainly not emerge from the action of the accused while acting or purporting to act in the discharge of their official duties. If it emerges from the evidence adduced before the trial court that Neeraj Kumar was actually detained during the period from 24-6-1999 to 28-6-1999, the said detention cannot be taken to have been made by the accused while acting or purporting to act in the discharge of their official duties. More so, because it is not the case of the appellants that they had kept Neeraj Kumar in jail during the period from 24-6-1999 to 28-6-1999. If they had not detained him during the above period, it is not open to anyone to assume the position that the detention of Neeraj Kumar, during the above period, was while acting or purporting to act in the discharge of their official duties. Therefore, in the peculiar facts and circumstances of this case, based on the legal position declared by this Court in P.P. Unnikrishnan case [P.P. Unnikrishnan v. Puttiyottil Alikutty, (2000) 8 SCC 131 : 2000 SCC (Cri) 1460] ,

> we are of the considered view that sanction for prosecution of the accused in relation to the detention of Neeraj Kumar for the period from 24-6- 1999 to 28-6-1999 would not be required before a court of competent jurisdiction takes cognizance with reference to the alleged arrest of Neeraj Kumar. We therefore hereby, endorse the conclusions drawn by the High Court to the above effect." (emphasis supplied)

65.Thus, the legal position that emerges from a conspectus of all the decisions referred to above is that it is not possible to carve out one universal rule that can be uniformly applied to the multivarious facts and circumstances in the context of which the protection under Section 197 CrPC is sought for. Any attempt to lay down such a homogenous standard would create unnecessary rigidity as regards the scope of application of this provision. In this context, the position of law may be summarized as under: -

> (i) The object behind the enactment of Section 197 CrPC is to protect responsible public servants against institution of possibly false or vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act in their official capacity. It is to ensure that the public servants are not prosecuted for anything which is done by them in the discharge of their official duties, without any reasonable cause. The provision is in the form of an assurance to the honest and sincere officers so that they can perform their public duties honestly, to the best of their ability and in furtherance of public interest, without being demoralized.
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> (ii) The expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" in Section 197 CrPC must neither be construed narrowly nor widely and the correct approach would be to strike a balance between the two extremes. The section should be construed strictly to the extent that its operation is limited only to those acts which are discharged in the "course of duty". However, once it has been ascertained that the act or omission has indeed been committed by the public servant in the discharge of his duty, then a liberal and wide construction must be given to a particular act or omission so far as its "official" nature is concerned.
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> (iii) It is essential that the Court while considering the question of applicability of Section 197 CrPC truly applies its mind to the factual situation before it. This must be done in such a manner that both the aspects are taken care of viz., on one hand, the public servant is protected under Section 197 CrPC if the act complained of falls within his official duty and on the other, appropriate action be allowed to be taken if the act complained of is not done or purported to be done by the public servant in the discharge of his official duty.
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> (iv) A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such that it lies within the scope and range of his official duties. The act complained of must be integrally connected or directly linked to his

duties as a public servant for the purpose of affording protection under Section 197 CrPC.

Hence, it is not the duty which requires an examination so much as the "act" itself.

(v) One of the foremost tests which was laid down in this regard was -

whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.

(vi) Later, the test came to be re-modulated. It was laid down that there must be a reasonable connection between the act done and the discharge of the official duty and the act must bear such relation to the duty such that the accused could lay a reasonable, but not a pretended or fanciful claim, that his actions were in the course of performance of his duty. Therefore, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be committed by the public servant either in his official capacity or under the color of the office held by him such that there is a direct or reasonable connection between the act and the official duty.

(vii) If in performing his official duty, the public servant acts in excess of his duty, the excess by itself will not be a sufficient ground to deprive the public servant from protection under Section 197 CrPC if it is found that there existed a reasonable connection between the act done and the performance of his official duty.

(viii) It is the "quality" of the act that must be examined and the mere fact that an opportunity to commit an offence is furnished by the official position would not be enough to attract Section 197 CrPC.

(ix) The legislature has thought fit to use two distinct expressions "acting" or "purporting to act". The latter expression means that even if the alleged act was done under the color of office, the protection under Section 197 CrPC can be given. However, this protection must not be excessively stretched and construed as being limitless. It must be made available only when the alleged act is reasonably connected with the discharge of his official duty and not merely a cloak for doing the objectionable act.

(x) 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 such a rule. However, a "safe and sure test" would be to consider if the omission or neglect on the part of the public servant to commit the act complained of would have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, the protection under Section 197 CrPC can be granted since there was every connection with the act complained of and the official duty of the public servant.

(xi) The provision must not be abused by public servants to camouflage the commission of a crime under the supposed color of public office. The benefit of the provision must not be extended to public officials who try to take undue advantage of their position and misuse the authority vested in them for committing acts which are otherwise not permitted in law. In such circumstances, the acts committed must be considered dehors the duties which a public servant is required to discharge or perform.

(xii) On an application of the tests as aforesaid, if on facts, it is prima facie found that the act or omission for which the accused has been charged has a reasonable connection with the discharge of his official duty, the applicability of Section 197 CrPC cannot be denied.

66.At the cost of repetition, we say that the position of law on the application of Section 197 CrPC is clear – that it must be decided based on the peculiar facts and circumstances of each case. This Court has held in a legion of decisions that any misuse or abuse of powers by a public servant to do something that is impermissible in law like threatening to provide a tutored statement or trying to obtain signatures on a blank sheet of paper; causing the illegal detention of an accused; engaging in a criminal conspiracy to create false or fabricated documents; conducting a search with the sole object of harassing and threatening individuals, amongst others, cannot fall under the protective umbrella of Section 197 CrPC.

67.In light of the same, it follows that when a police official is said to have lodged a false case, he cannot claim that sanction for prosecution under Section 197 CrPC was required since it can be no part of the official duty of a public official to lodge a bogus case and fabricate evidence or documents in connection with the same. On examining the quality of the act, it is evident that there exists no reasonable or rational nexus between such an act and the duties assigned to the public servant for the claim that it was done or purported to be done in the discharge of his official duty. The mere fact that an opportunity to register a false case was furnished by the official duty would certainly not be sufficient to apply Section 197 CrPC. Allowing so, would enable the accused to use their status as public servants as a facade for doing an objectionable, illegal and unlawful act and take undue advantage of their position. If the Case Crime No. 967 of 2007 registered at the Murar Police Station, Gwalior, by respondent nos. 3, 4 and 5 respectively, was a false case, then there is no doubt that the refusal to grant sanction would not operate as a bar for their prosecution. Moreover, as far as the case of respondent no. 1 is concerned, it is an undisputed fact that he was not even posted as the S.H.O or T.I at the Murar Police Station when the said false case was registered. The same is evident from the affidavit submitted by the IO at Firozabad before the High Court. Additionally, the respondent no. 1 has himself admitted in his submissions before us that he was in fact posted at District Shivpuri which is 120 kms away from Gwalior during the relevant time. Therefore, any act or offence committed by the respondent no. 1 in the present case can safely be said to have been outside the scope of his official duty which obviates the question of sanction for his prosecution.

68. Having said the above, the question whether sanction is required or not is a question that may arise at any stage of the proceeding. There might arise situations where the complaint or the police report may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty. However, the facts subsequently coming to light may establish the

necessity for sanction. That the necessity of sanction may also reveal itself in the course of the progress of the case as was laid out in Matajog (supra) as follows:

> "20. Is the need for sanction to be considered as soon as the complaint is lodged and on the allegations therein contained? At first sight, it seems as though there is some support for this view in Hori Ram case [(1939) FCR 159, 178] and also in Sarjoo Prasad v. King-Emperor [(1945) FCR 227]. Sulaiman, J. says that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution. Varadachariar, J. also states that the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceeding. But a careful perusal of the later parts of their judgments shows that they did not intend to lay down any such proposition. Sulaiman, J. refers (at P-179) to the prosecution case as disclosed by the complaint or the police report and he winds up the discussion in these words: "Of course, if the case as put forward fails or the defence establishes that the act purported to be done is in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground". The other learned Judge also states at p. 185, "At this stage we have only to see whether the case alleged against the appellant or sought to be proved against him relates to acts done or purporting to be done by him in the execution of his duty". It must be so. The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case." (emphasis supplied)

69. In Pukhraj v. State of Rajasthan and Another reported in (1973) 2 SCC 701, the 2nd respondent was alleged to have abused and kicked his clerk who was his subordinate and was charged under Sections 323 and 504 IPC. The Court opined that such an act cannot be said to be in the purported exercise of his duty and held that sanction under Section 197 CrPC was not necessary. However, it was also observed that the necessity of sanction may reveal itself in the course of progress of the case and that it would be open to the accused to place materials on record during the trial for showing what his duty was and also that the acts complained of were so interrelated to his duty that protection under Section 197 CrPC must be granted to him. It was observed as follows:

> "3. We must also make it clear that this is not the end of the matter. As was pointed out in Sarjoo Prasad v. King- Emperor [AIR 1946 FC 25 : 1954 FCR 227 : 47 Cri LJ 838] referring to the observations of Sulaiman, J. in Hori Ram Singh case the mere fact that the accused proposes to raise a defence of the act having purported to be done in execution of duty would not in itself be sufficient to justify the case being thrown out for want of sanction. At this stage we have only to see whether the acts alleged against the 2nd respondent can be said to be in purported execution of his duty. But facts subsequently coming to light during the course of the judicial inquiry

> or during the course of prosecution evidence at the trial may establish the necessity for sanction. Whether sanction is necessary or not may have to depend from stage to stage. The necessity may reveal itself in the course of the progress of the case [see observations in Matajog Dobey v. H.C. Bhari]. In Bhagwan Prasad Srivastava v. N.P. Misra also it was pointed out that it would be open to the appellant (the 2nd respondent in this case) to place the material on record during the course of the trial for showing what his duty was and also that the acts complained of were so inter-related with his official duty so as to attract the protection afforded by Section 197 CrPC." (emphasis supplied)

70. In B. Saha (supra), the Court went on to observe that they have no quarrel with the proposition that the question of sanction under Section 197 CrPC can be raised and considered at any stage of the proceedings. Moreover, it was also stated that in considering the question whether or not sanction for prosecution was required, it is not necessary for the Court to confine itself to the allegations in the complaint, and it can take into account all the material on record at the time when the question is raised and falls for consideration. Similar to the rationale adopted in B. Saha (supra), this Court in State of Bihar v. Kamla Prasad Singh and Others reported in (1998) 5 SCC 690 also re-affirmed that while determining whether the public servant was "acting in the discharge of his official duty", the Court must consider not only the allegations made in the complaint but also other materials available on record.

71. In Bakhshish Singh Brar v. Gurmej Kaur and Another reported in (1987) 4 SCC 663, the petitioner police officer along with 14 other persons was charged under Sections 148, 149, 302, 323 and 325 IPC for allegedly causing hurt to the complainant and also causing the death of her son. This Court had emphasized that a balance has to be struck between protecting public servants from being harassed in criminal prosecutions and protecting the rights of the citizens against unlawful acts of public servants. This must be done by examining as to what extent and how far is a public servant working in the discharge or purported discharge of his duties and whether the public servant had exceeded his limit. Having said so, it was observed that criminal trials must also not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence. The relevant observations are reproduced hereinbelow:

> "6. In the instant case, it is alleged that grievous injuries were inflicted upon the complainant and as a result of injuries one of the alleged accused had died. The question is while investigating and performing his duties as a police officer was it necessary for the petitioner to conduct himself in such a manner which would result in such consequences. It is necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, that is the rationale behind Section 196 and Section 197 of the CrPC. But it is equally important to emphasise that rights of the citizens should be protected and no excesses should be permitted. "Encounter death" has become too common. In the facts and circumstance 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 limit. It is true that Section 196 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence." (emphasis supplied)

72. This Court in P.K. Pradhan v. State of Sikkim reported in (2001) 6 SCC 704 re-emphasized that for invoking protection under Section 197 CrPC, the acts of the accused must be such that it cannot be separated from the discharge of the official duty. However, if there was no reasonable connection between the act and the performance of those duties, and the official status only furnishes the occasion or opportunity for the illegal act, then no sanction would be required. The Court acknowledged that the question of sanction can be raised at any time after cognizance i.e., maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. However, there may be certain cases where it may not be possible to decide the question of sanction effectively without giving opportunity to the defence to establish that what he did, he did in the discharge of official duty. In such cases, the question of sanction must be left open to be decided in the main judgment which may be delivered upon conclusion of the trial. The relevant observations are as follows:

"15....It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.

16. In the present case, the accused is claiming that in awarding contract in his capacity as Secretary, Department of Rural Development, Government of Sikkim, he did not abuse his position as a public servant and works were awarded in favour of the contractor at a rate permissible under law and not low rates. These facts are required to be established which can be done at the trial. Therefore, it is not possible to grant any relief to the appellant at this stage.

However, we may observe that during the course of trial, the court below shall examine this question afresh and deal with the same in the main judgment in the light of the law laid down in this case without being prejudiced by any observation in the impugned orders." (emphasis supplied)

73.This Court in Devinder Singh v. State of Punjab reported in (2016) 12 SCC 87 had observed that sometimes certain questions about the requirement of sanction cannot be decided without evidence and questions like the good faith or bad faith of the public servant can be decided on the conclusion of trial. The relevant observations made are reproduced hereinbelow:

> "39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.
>
> 39.9. In some cases, it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.
>
> 40. In the instant cases, the allegation as per the prosecution case is that it was a case of fake encounter or death caused by torture whereas the defence of the accused person is that it was a case in discharge of official duty and as the deceased was involved in the terrorist activities and while maintaining law and order the incident has taken place. The incident was in the course of discharge of official duty. Considering the aforesaid principles in case the version of the prosecution is found to be correct, there is no requirement of any sanction.

However, it would be open to the accused persons to adduce the evidence in defence and to submit such other materials on record indicating that the incident has taken place in discharge of their official duties and the orders passed earlier would not come in the way of the trial court to decide the question afresh in the light of the aforesaid principles from stage to stage or even at the time of conclusion of the trial at the time of judgment. As at this stage it cannot be said which version is correct. The trial court has prima facie to proceed on the basis of the prosecution version and can re-decide the question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to the notice of the court that there was a reasonable nexus of the incident with discharge of official duty, the court shall re-examine the question of sanction and take decision in accordance with law. The trial to proceed on the aforesaid basis." (emphasis supplied)

74.The legal position that emerges from the discussion of the aforesaid case laws is that:

(i) There might arise situations where the complaint or the police report may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty. However, the facts subsequently coming to light may establish the necessity for sanction. Therefore, the question whether sanction is required or not is one that may arise at any stage of the proceeding and it may reveal itself in the course of the progress of the case.

(ii) There may also be certain cases where it may not be possible to effectively decide the question of sanction without giving an opportunity to the defence to establish that what the public servant did, he did in the discharge of official duty. Therefore, it would be open to the accused to place the necessary materials on record during the trial to indicate the nature of his duty and to show that the acts complained of were so interrelated to his duty in order to obtain protection under Section 197 CrPC.

(iii) While deciding the issue of sanction, it is not necessary for the Court to confine itself to the allegations made in the complaint. It can take into account all the material on record available at the time when such a question is raised and falls for the consideration of the Court.

(iv) Courts must avoid the premature staying or quashing of criminal trials at the preliminary stage since such a measure may cause great damage to the evidence that may have to be adduced before the appropriate trial court.

75.In the present case, we are concerned with the allegation of registering an FIR i.e., Case Crime No. 967 of 2007 for the offence under Section 34 of the Excise Act at the Murar Police Station, Gwalior, Madhya Pradesh at the instance of the accused respondents so as to facilitate one Ashok Dixit in raising the plea of alibi in Case Crime No. 617 of 2007 filed at the Dakshin Police Station, Firozabad, Uttar Pradesh for the murder of the appellant's brother. The appellant's brother was shot dead at 08:30 am on 12.10.2007 in Firozabad, Uttar Pradesh and the arrest of the accused Ashok Dixit for the offence under the Excise Act is said to have been made at 09:30 am on the very same day in Gwalior, Madhya Pradesh. Evidently the accused in both the cases i.e., Ashok Dixit could not have been simultaneously present at both the places on the same day, especially when the distance between the two locations is 160 Kms and such a distance cannot be covered by road in one hour. This is precisely the reason why the appellant asserts that the case registered at Gwalior is false or in other words concocted.

76.It is relevant to note that the Trial Court vide its order dated 10.07.2015 held the accused, Ashok Dixit along with 11 others guilty of murder of the appellant's brother. In doing so, the Trial Court had made some pertinent observations regarding the registration of the case under the Excise Act by the accused respondents. The Trial Court had arrived at a categorical finding that the second FIR was registered as a result of collusion by the present accused respondents with Ashok Dixit. It has been observed that the IO at Dakshin, Firozabad after thorough investigation had found out that the entire case was concocted and hence, the Charge Sheets giving rise to Case Nos. 67 of 2008 and 67A of 2009 had been filed against the accused respondents for being involved in the conspiracy of

murder. The Trial Court also observed that the accused respondents had been suspended by the SSP, Gwalior and a departmental inquiry had been initiated against them. Adding to the above, the High Court of Madhya Pradesh vide order dated 25.08.2009 had also stayed the proceedings in Case No. 15003 of 2007 (State vs. Ashok Dixit) under Section 34 of the Excise Act which is pending before the CJM, Gwalior for the reason that a decision in that case might cause severe prejudice to the case of murder of the appellant's brother.

77.The statements of the respondent nos. 3, 4 and 5 respectively recorded earlier by the IO at Dakshin, Firozabad during the course of his investigation on 23.01.2008 and later by the SHO of the Murar Police Station, D.S. Khushawa on 12.02.2008, under Section 161 CrPC, are the only pieces of evidence that have been adduced before us for our consideration. Those statements reveal that – (a) amongst the two panchas of arrest and seizure namely, Shailendra Singh and Triloki Gaur in the alleged false second case i.e., Case Crime No. 967 of 2007, Triloki Gaur was the former driver of the respondent no. 1, (b) the respondent no. 1 had arrived at the Murar Police Station shortly after the alleged arrest of Ashok Dixit and had conversed with the SHO of the Murar Police Station, D. S. Khushawa, (c) the respondent no. 1 also had a conversation with the person arrested by the accused respondents, and (d) the respondent no. 1 had asked the SHO of the Murar Police Station, D.S. Khushawa, to release the arrested person on bail stating that he was his relative. However, it is settled law that a statement recorded under Section 161 CrPC does not constitute substantive evidence and can only be utilized for the limited purpose of proving contradictions and/or omissions as envisaged under Section 145 of the Evidence Act, 1872. This has been laid down in a catena of decisions including in Parvat Singh and Others v. State of Madhya Pradesh reported in (2020) 4 SCC 33 which observed as follows:

> "13.1...However, as per the settled proposition of law a statement recorded under Section 161 CrPC is inadmissible in evidence and cannot be relied upon or used to convict the accused. As per the settled proposition of law, the statement recorded under Section 161 CrPC can be used only to prove the contradictions and/or omissions. Therefore, as such, the High Court has erred in relying upon the statement of PW 8 recorded under Section 161 CrPC while observing that the appellants were having the lathis." (emphasis supplied)

78.The aforesaid position of law was reiterated in Birbal Nath v. State of Rajasthan reported in 2023 SCC OnLine SC 1396 which observed as thus:

> "19. Statement given to police during investigation under Section 161 cannot be read as an "evidence". It has a limited applicability in a Court of Law as prescribed under Section 162 of the Code of Criminal Procedure (Cr.P.C.).
>
> 20. No doubt statement given before police during investigation under Section 161 are "previous statements" under Section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this is only for a limited purpose, to "contradict" such a witness. Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally

discrediting this witness. It is here that we feel that the learned judges of the High Court have gone wrong." (emphasis supplied)

79. Moreover, the statements of the two independent witness i.e., Ramesh Yadav and Barelal recorded on 25.10.2008 by the IO at Dakshin, Firozabad, implicating the respondent no. 1, cannot be taken as a gospel truth either, especially when they were not examined in the Session Trial Nos. 753 and 753A of 2008 respectively which resulted in the conviction of the accused Ashok Dixit. Therefore, we are a bit hesitant to rely on the version of events as stated under these statements recorded under Section 161 CrPC at this stage. It would be best left for the Trial Court to decide the truthfulness and veracity of these statements which allegedly prove the case of the prosecution.

80.Furthermore, the respondent no. 1 has contended that no departmental inquiry was ever initiated against him in relation to the registration of Case Crime No. 967 of 2007. However, the Trial Court in its order dated 10.07.2015 has made an observation that the respondent nos 1, 3, 4 and 5 respectively were suspended and also subjected to an inquiry. Whether the departmental inquiry was initiated against all the accused respondents or just some of them and the exact findings of the inquiry is also an aspect where there exists some ambiguity.

81.Having said so, on the other hand, the respondent nos. 3, 4 and 5 respectively have also not adduced any credible evidence before us to prima facie establish that it was Ashok Dixit who was arrested at 09:30 am at Murar, Gwalior; that the illegal liquor carried by him was seized, and that he was later released from the Murar Police Station on the directions of SHO, D.S. Khushawa upon furnishing a surety. It is true that the offence contemplated under Section 34 of the Excise Act is bailable and that any accused under the said offence would be entitled to be released on bail from the police station. However, bearing in mind that there exist serious suspicion as to whether an arrest was ever made to begin with and if made, whether it was Ashok Dixit who was indeed arrested, we find ourselves unable to arrive at an appropriate decision at this stage due to lack of reliable and credible evidence to verify the same. The respondent nos. 3, 4 and 5 respectively have stated that the accused had identified himself to be Ashok Dixit upon arrest and it is unclear whether the identity of the said accused was further duly verified while the case was registered under the Excise Act. Despite the appellant's allegation that the release of the said accused on bail from the police station was done hurriedly, almost immediately after arrest, in order to conceal the identity of the person who was released and that an unconnected stranger might have been released from the police station, no other material which substantiates the bona fides of respondent nos. 3, 4 and 5 have been made available before us at the present moment.

82.It is the case of the IO at Dakshin, Firozabad that sanction for prosecution of the accused respondents was not granted by the D.I.G., Gwalior citing the pendency of Case No. 15003 of 2007 in Case Crime No. 967 of 2007 registered for the offence under the Excise Act before the CJM, Gwalior. However, those proceedings have been stayed by the High Court of Madya Pradesh vide order dated 25.08.2009 and therefore, the question of sanction can be re-visited, if found necessary.

83.As far as respondent no. 1 is concerned, it is made clear that there would be no requirement for sanction since he was not acting in the discharge of his official duty by virtue of not being posted at

Murar Police Station, Gwalior at the relevant time when the alleged false case was registered. As a consequence, the extent of the involvement of respondent no. 1 in the alleged conspiracy to murder can be determined by the Trial Court upon a further examination of the evidence adduced before itself. However, so far as the respondent nos. 3, 4 and 5 respectively are concerned, if the case of the prosecution that they had also played a dubious role in registering a false case is correct then the requirement of sanction would not be a sin qua non for proceeding further with the criminal proceedings. However, the defence must be given an opportunity to rebut the same by leading appropriate evidence.

84.At this juncture on a prima facie examination of the materials adduced before us, we are of the opinion that the criminal proceedings pending before the CJM, Firozabad as Case Nos. 67 of 2008 and 67A of 2009 should not have been quashed at such a preliminary stage. In cases where there is a legitimate doubt as regards whether sanction for prosecution under Section 197 CrPC is required or not, the progress of the trial must not be hampered or unnecessarily delayed. Therefore, the CJM, Firozabad had rightly taken cognizance of the two charge sheets vide its orders dated 24.11.2008 and 10.08.2009 respectively. The High Court committed an error in failing to consider this aspect while quashing the proceedings in Case No. 67 of 2008 and 67A of 2009 respectively vide its impugned order.

85.In view of the aforesaid discussion, the Trial Court is directed to proceed with the trial and at any stage of the trial if the evidence suggests that the acts complained of were indeed done or purported to be done in the discharge of official duty by respondent nos. 3, 4 and 5 respectively or that the FIR registered by them was not bogus, the trial may be stayed for want of sanction. Therefore, the question of sanction only qua respondent nos. 3, 4 and 5 respectively is left open to be appropriately decided by the Trial Court at a suitable stage, in accordance with the law, without being prejudiced by any of the observations made in this order as well as in the order passed by the High Court. As these proceedings arise from a case registered more than 16 years ago, the Trial Court is directed to proceed with the trial & conclude it expeditiously preferably within one year from today.

G. CONCLUSION

86.In light of the aforesaid, the appeals filed by the appellant are allowed and the impugned order passed by the High Court is set aside.

87. We dispose of the present appeals in light of the aforesaid directions.

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

.....J. (J.B. Pardiwala) .....J. (Manoj Misra) New Delhi.

13th December, 2024.