D. Devaraja vs Owais Sabeer Hussain on 18 June, 2020

Equivalent citations: AIR 2020 SUPREME COURT 3292, 2020 (4) AKR 66, AIRONLINE 2020 SC 597

Author: Indira Banerjee

Bench: Indira Banerjee, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 458 OF 2020
[ARISING OUT OF SLP (CRL.) NO.1882 OF 2018]

D. DEVARAJA …Appel

VERSUS

OWAIS SABEER HUSSAIN …Respond

JUDGMENT

Indira Banerjee, J.

Leave granted.

2. This appeal is against a judgment and order dated 31-1-2018 passed by the Karnataka High Court, disposing of the application of the appellant under Section 482 of the Code of Criminal Procedure for quashing an order dated 27-12-2016 passed by the Additional Chief Metropolitan Magistrate III, Bengaluru City in PCR No.17214 of 2013, taking cognizance of a private complaint being PCR No.17214 of 2013 inter alia against the accused appellant, for offences punishable under Sections 120-B, 220, 323, 330 348, 506B read with Section 34 of the Indian Penal Code. The High Court did not quash the impugned order of the Additional Chief Metropolitan Magistrate dated 27.12.2006,

but remitted the complaint back to the Learned Additional Chief Metropolitan Magistrate instead, with inter alia liberty to the accused appellant to apply for discharge.

3. The accused appellant is a police officer of the rank of Superintendent of Police. On or about 10-8-2012, when the accused appellant was posted as Deputy Commissioner of Police (Crime), Bangalore city, the Commissioner of Police, Bangalore passed an order transferring a case being Crime No.12/2012 registered at the Ulsoor Police Station, Bangalore, to the Central Crime Branch, Bangalore.

4. After the aforesaid order was passed, the Deputy Commissioner of Police (Eastern Division) Bangalore City directed the Inspector of Police, Ulsoor Police Station to transmit the entire case records relating to Crime No.12/2012 to the Crime Branch.

5. The accused appellant, who was posted as Deputy Commissioner of Police (Crime) received the case records and handed over investigation of the case to the Inspector of Police by a memo dated 2-1-2013. Thereafter, the Inspector of Police, being the 3 rd accused took up investigation under the guidance of the Assistant Commissioner of Police being the 2nd accused, with the assistance of the Sub-Inspector of Police being the accused No.4.

6. The accused appellant has stated that police officers of the Crime Department enquired into the history of the respondent and his family and found that the respondent was involved in the following cases.

Cases against Owais Sabeer Hussain/ Respondent Sl. Date Police Station FIR Sections No. Number 1 26.02.2013 HSR Layout, 110/2013 420, 465, 468 of IPC Bengaluru 2 03.05.2013 Subramanyanagar, 44/2013 420 of IPC Bangalore

7. There were also other cases registered against the brothers of the respondent under various sections of the Indian Penal Code. According to the accused appellant, as per available information the respondent and the members of his family were involved in 13 cases, in all. Particulars of the other cases are given below:

> CASES REGISTERED AGAINST THE BROTHERS OF RESPONDENT Sl. Date Police Station FIR Sections No. Number 1 01.09.2009 Andersonpet, KGF 3/2009 143, 149, 354, 504,506 of IPC 2 01.11.2009 Andersonpet, KGF 4/2009 107 of IPC 3 02.12.2009 Andersonpet, KGF 13/2009 379,427,447, 500 of IPC 4 04.02.2009 Andersonpet, KGF 51/2009 107 of IPC 5 10.03.2011 High Grounds, 187/2011 506 of IPC Bengaluru 6 03.02.2012 High Grounds, 57/2012 323, 324, 241, 353, Bengaluru 506(B) of IPC 7 21.03.2012 Andersonpet,KGF 27/2012 107 of IPC 8 02.01.2013 Ashoknagar, 52/2013 417, 419, 420, 465, Bangalore 468, 471, 120(B), r/w 34 of IPC 9 25.05.2012 High Grounds, 135/2012 423, 404, 465, 468, Bengaluru 471, 472, 474, 475, 476, 463, 464 of IPC 10 03.05.2013 Sanjaynagar, 75/2013 420, 468, 471, 506 Bengaluru r/w 34 of IPC 11 21.08.2011 High Grounds, 153/2011 468, 471, 420, 506 of Bengaluru IPC

8. On receipt of information that the respondent was involved in Crime No.12/2012 of Ulsoor Police Station, the Inspector of Police being the 3rd accused, along with Sub-Inspector of Police and other personnel raided House No.116 1st Floor, 1st Cross, New BEL Road, Bangalore belonging to the respondent. The respondent was also detained in connection with the aforesaid case, and later arrayed as accused in the aforesaid case (Crime No. 12/2012)

9. The respondent was arrested under panchnama on 27-2-2013, after which he was produced before the jurisdictional Magistrate being the Additional Chief Metropolitan Magistrate I at Bengaluru on 28-2-2013. By an order dated 28-2-2013, the learned Additional Chief Metropolitan Magistrate I, Bengaluru remanded the respondent to police custody, observing that the respondent had not complained of any ill-treatment by the Police.

10. On 1-3-2013, the Investigating Officer seized a stolen car being Tata Manza car which was parked on the road adjacent to the respondent's house, allegedly pursuant to a voluntary statement of the respondent. Inquiry revealed that the car was related to Crime No.110 of 2013 registered with HSR Layout police station.

11. On or about 2-3-2013, K. M. Hussain, father of the respondent, filed a Habeas Corpus Petition being WP(HC) No. 57 of 2013 in the karnataka High Court at Bengaluru, seeking an order for production of the respondent from alleged illegal detention. On 4-3-2013, the learned Magistrate passed an order for medical examination of the respondent in view of allegations made by the respondent and/or his father, of ill-treatment of the respondent, by the Police. The respondent was taken to Jayadev Institute of Cardiology and later to Victoria hospital for check-up and treatment. The doctors gave a detailed report ruling out any abnormalities and injuries on the respondent, after perusal of which, the learned 1 st Additional Chief Metropolitan Magistrate, Bengaluru passed an order dated 4-3-2013, observing that there were no abnormalities and injuries found on the respondent.

12. On 6-3-2013 the accused appellant, as Deputy Commissioner of Police (CCB), Bangalore filed an affidavit in WP(HC) No.57 of 2013 in the Karnataka High Court at Bengaluru. An enquiry report was filed along with the said affidavit, stating that the Investigating Officer had apprehended the respondent, Sabir Hussain @ Uwaiz Hussain in relation to Crime No.12/2012 registered in Halasuru Police Station, for offence under Section 381 of IPC and produced him before the Court of the jurisdictional Magistrate in accordance with law.

13. By an order dated 8-03-2013, the Karnataka High Court dismissed the Habeas Corpus Petition being WP(HC) No.57 of 2013 filed by the respondent's father, observing inter alia that eight criminal cases were pending against the respondent and that he had been produced before the jurisdictional Magistrate in accordance with law.

14. On 18-3-2013, Crime No.110 of 2013 HSR Layout Police Station was transferred to the Central Crime Branch. After the respondent was released from judicial custody, he filed the aforesaid private complaint being P.C.R. No.17214 of 2013 against the accused appellant and other police officials, in the Court of the learned IIIrd Additional Chief Metropolitan Magistrate at Bengaluru alleging ill-

treatment and police excesses while the respondent was in police custody from 27-2-2013 to 4-3-2013.

15. By an order dated 27-12-2016, the IIIrd Additional Chief Metropolitan Magistrate, Bengaluru, was pleased to take cognizance against the appellant in P.C.R. No. 17214 of 2013, even though no previous sanction had been obtained from the Government. The accused appellant filed Criminal Petition No.319 of 2017 under Section 482 of the Code of Criminal Procedure in the Karnataka High Court at Bengaluru inter alia for quashing the order dated 27-12- 2016 in P.C.R. No.17214 of 2013.

16. By the impugned order dated 31-1-2018, the Karnataka High Court was pleased to hold that it was a well recognised principle of law, that sanction was a legal requirement, which empowered the Court to take cognizance of a private criminal complaint against a public servant. After recording its finding, as aforesaid, the High Court proceeded to observe that the Magistrate had tentatively opined that sanction was not necessary to proceed against the accused appellant, having regard to the documents produced by the complainant before him, and remanded the complaint back to the Trial Court, with a direction on the accused appellant to appear before the Trial Court and file an application under Section 245 of the Code of Criminal Procedure for discharge. The Magistrate was directed to pass an appropriate order on the application for discharge, if filed, before recording evidence on the merits of the allegations.

17. Being aggrieved by the aforesaid order dated 31-1-2018, to the extent that the appellant has been remanded back to the learned Magistrate and directed to file a discharge application under Section 245 of the Code of Criminal Procedure, the appellant has filed this appeal.

18. The short question involved in this appeal is, whether the learned Magistrate could, at all, have taken cognizance against the appellant, in the private complaint being P.C.R No.17214 of 2013, in the absence of sanction under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, 1963, as amended by the Karnataka Police (Amendment) Act, 2013, and if not, whether the High Court should have quashed the impugned order of the Magistrate concerned, instead of remitting the complaint to the Magistrate concerned and requiring the accused appellant to appear before him and file an application for discharge.

19. Section 170 of the Karnataka Police Act, 1963 provides as follows:-

> "170. Suits or prosecutions in respect of acts done under colour of duty as aforesaid not to be entertained without sanction of Government. – (1) In any case of alleged offence by the Commissioner, a Magistrate, Police Officer or Reserve Police Officer or other person, or of a wrong alleged to have been done by such Commissioner, Magistrate, Police Officer or Reserve Police Officer or other person, by any act done under colour or in excess of any such duty or authority as aforesaid, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained except with the previous sanction of the Government.

(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall be bound to give to the alleged wrongdoer one month's notice at least of the intended suit with sufficient description of the wrong complained of, failing which such suit shall be dismissed.

(3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service, and shall state whether any, and if so, what tender of amends has been made by the defendant. A copy of the said notice shall be annexed to the plaint endorsed or accompanied with declaration by the plaintiff of the time and manner of service thereof."

20. Section 197 of the Code of Criminal Procedure 1973 is set out hereinbelow for convenience:

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-

(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.

(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.

21. Learned Senior Counsel appearing on behalf of the appellant, Mr. Saajan Poovayya submitted that the private complaint as also the order dated 27-12-2016 of the Magistrate taking cognizance of the private complaint, ought to have been quashed by the High Court, in the absence of sanction under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, 1963.

22. Mr. Poovayya argued that even otherwise there was no case against the accused appellant. Even assuming that there was any ill- treatment meted out to the appellant, while he was in police custody, there was no specific allegation against the accused appellant, who was not the Investigating Officer, but the Deputy Commissioner of Police.

23. Mr. Poovayya also emphatically argued that the respondent was arrested on 27.02.2013, and produced before the Magistrate on 28.02.2013, on which date he was remanded to police custody with the finding that there was no ill-treatment by the police. Even after the respondent's father filed the Habeas Corpus Petition in the High Court, there was no finding of any ill-treatment by the High Court.

24. Mr. Poovayya argued that the allegation of police excesses in course of investigation, and police custody of the respondent, has a reasonable nexus with the duty of the appellant as a police officer. Even if the act was in dereliction of duty or in excess of duty, it was nevertheless in exercise of authority as a police officer, in connection with investigation of an alleged crime in which the respondent was alleged to be involved. The police officers were duty bound to investigate into an offence. The excesses alleged were in course of discharge of such official duty of investigating into an offence.

25. Mr. Poovayya emphatically argued that under Section 170 of the karnataka Police Act, no prosecution is to be entertained against a Police Officer, except with the previous sanction of the Government, in case of any wrong alleged to have been done by such officer, by any act in pursuance of any duty imposed or authority conferred on him by any provision of the Karnataka Police Act, 1963, or any other law for the time being in force, or even any act done under colour of or in excess of any such duty or authority. The criminal complaint against the accused appellant should, therefore, have been quashed under Section 482 of the Criminal Procedure Code for want of sanction under Section 197 of the Code of Criminal Procedure 1973, read with Section 170 of the Karnataka Police Act, 1963. In support of his argument, Mr. Poovayya cited the judgments of this Court in D.T. Virupakshappa v. C. Subash1, Virupaxappa Veerappa Kadampur v. State of Mysore2, Sankaran Moitra v. Sadhna Das and Another3 and K.K. Patel and Another v. State of Gujarat and Another4. Mr. Poovayya also cited State of Orissa v. Ganesh Chandra Jew5.

26. On the other hand, Mr. Sidharth Luthra, Senior Advocate appearing on behalf of the respondent argued that, whether sanction was necessary or not, had to be decided, keeping in mind the nature of the complaint, which, in this case, was of physical torture and ill- treatment of the respondent. Ill-treatment and torture could never be in exercise of official duty, or even under the colour of official duty.

27. Mr. Luthra further argued that, in any case, whether sanction was necessary or not, would have to be determined in course of the trial, having regard to the materials brought on record by the respective parties. A complaint should not be nipped in the bud on the ground of want of sanction.

28. Mr. Luthra also submitted that, an order of a Magistrate, taking cognizance of a complaint was not amenable to challenge under Section 482 of the Code of Criminal Procedure. The High Court rightly remanded the complaint to the Trial Court. 1 (2015) 12 SCC 231 2 AIR 1963 SC 849 3 (2006) 4 SCC 584 4 (2000) 6 SCC 195 5 (2004) 8 SCC 40

29. Mr. Luthra concluded with the argument that the accused appellant can have no grievance against the judgment and order under appeal, since the High Court has given the accused appellant the liberty to apply for discharge under Section 245 of the Code of Criminal Procedure and has directed the Trial Court to decide such application, if made, before recording evidence on the merit of the allegations made against him.

30. In support of his arguments, Mr. Sidharth Luthra has cited following cases:

> (1) Devinder Singh & Ors. v. State of Punjab through CBI6 (2) State of Maharashtra v. Atma Ram 7 (3) Bhanuprasad Hariprasad Dave v. State of Gujarat8 (4) State of Andhra Pradesh v. N. Venugopal and Others9 (5) Satyavir Singh Rathi, Assistant Commissioner of Police & Ors. v. State Thr. CBI10 (6) Bakhshish Singh Brar v. Gurmej Kaur & Anr.11 (7) Om Prakash & Ors. v. State of Jharkhand & Anr.12

31. To effectively adjudicate the issues raised in this appeal, it is necessary to examine the scope and effect of Section 197 of the Criminal Procedure Code and/or Section 170 of the Karnataka Police

6. (2016) 12 SCC 87

7. AIR 1966 SC 1786

8. AIR 1968 SC 1323

9. AIR 1964 SC 33

10. (2011) 6 SCC 1

11. (1987) 4 SCC 663

12. (2012) 12 SCC 72 Act, 1963. It is necessary to examine whether want of sanction would vitiate criminal proceedings against a police officer, in all cases? If not, what are the circumstances in which sanction is necessary.

32. The object of sanction for prosecution, whether under Section 197 of the Code of Criminal Procedure, or under Section 170 of the Karnataka Police Act, is to protect a public servant/police

officer discharging official duties and functions from harassment by initiation of frivolous retaliatory criminal proceedings. As held by a Constitution Bench of this Court in Matajog Dobey v. H.C. Bhari13 held:

> "...Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard..... There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction..."

33. In Pukhraj v. State of Rajasthan and Another14 this Court held:

> "2. ..While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. 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 execution of duty. The test appears to be not that 13 AIR 1956 SC 44 14 (1973) 2 SCC 701 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 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 need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the 'capacity in which the act is performed', 'cloak of office' and 'professed exercise of the office' may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty..."

34. In Amrik Singh v. State of Pepsu 15 this Court referred to the judgments of the Federal Court in Dr. Hori Ram Singh v.

Emperor16; H.H.B. Gill v. Emperor17 and the judgment of the Privy Council in H.H.B. Gill v. R18 and held:

"...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..." 15 AIR 1955 SC 309 16 AIR 1939 FC 43 17 AIR 1947 FC 9 18 AIR 1948 PC 128

35. Section 197 of the Code of Criminal Procedure 1898, hereinafter referred to as the old Criminal Procedure Code, which fell for consideration in Matajog Dobey (supra), Pukhraj (supra) and Amrik Singh (supra) is in pari materia with Section 197 of the Code of Criminal Procedure 1973. The Code of Criminal Procedure, 1973 has repealed and replaced the old Code of Criminal Procedure.

36. In Ganesh Chandra Jew (supra) this Court held:

"7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official

duty."(emphasis supplied)

37. In State of Orissa v. Ganesh Chandra Jew (supra) this Court interpreted the use of the expression " official duty" to imply that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. Section 197 of the Code of Criminal Procedure does not extend its protective cover to every act or omission done by a public servant while in service. The scope of operation of the Section is restricted to only those acts or omissions which are done by a public servant in discharge of official duty.

38. In Shreekantiah Ramayya Munipalli v. State of Bombay19 this Court explained the scope and object of Section 197 of the old Criminal Procedure Code, which as stated hereinabove, is in pari materia with Section 197 of the Code of Criminal Procedure. This Court held:

"18. Now it is obvious that if Section 197 of the Code of Criminal Procedure 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. What it says is— 'When any public servant ... 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....' We have therefore first to concentrate on the word 'offence'.

19 AIR 1955 SC 287

19. Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the present case, the elements alleged against the second accused are, first, that there was an 'entrustment' and/or 'dominion'; second, that the entrustment and/or dominion was 'in his capacity as a public servant'; third, that there was a 'disposal'; and fourth, that the disposal was 'dishonest'. Now it is evident that the entrustment and/or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity. Therefore, the act complained of, namely, the disposal, could not have been done in any other way. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because the second accused could not dispose of the goods save by the doing of an official act, namely, officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it

remained unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it."

39. The scope of Section 197 of the old Code of Criminal Procedure, was also considered In P. Arulswami vs. State of Madras20 where this Court held:

"...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." If the act is totally 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...." 20 AIR 1967 SC 776

40. In B. Saha and Others v. M.S. Kochar21 this Court held:

"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."

41. In Virupaxappa Veerappa Kadampur v. State of Mysore (supra) cited by Mr. Poovayya, a three Judge Bench of this Court had, in the context of Section 161 of the Bombay Police Act, 1951, which is similar to Section 170 of the Karnataka Police Act, interpreted the phrase "under colour of duty" to mean "acts done under the cloak of duty, even though not by virtue of the duty".

42. In Virupaxappa Veerappa Kadampur (supra) this Court referred to the meaning of the words "colour of office" in Wharton's Law Lexicon, 14th Ed. Which is as follows:

"Colour of office" "When an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour."

43. This Court also referred to the meaning of "colour of office in Stroud's Judicial Dictionary, 3rd Edition, set out hereinbelow:

Colour: "Colour of office" is always taken in the worst part, and signifies an act evil done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office is but a veil to the falsehood, and the thing is grounded upon Vice, and the Office is as a shadow to it. But 'by reason of the office' and 'by virtue of the office are taken always in the best part." 21 (1979) 4 SCC 177

44. After referring to the Law Lexicons referred to above, this Court held:

"It appears to us that the words under colour of duty have been used in s.161(1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police officer) prepares a false Panchnama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in stroud's Dictionary as a veil to his falsehood. The acts thus done in dereliction of his duty must be held to have been done "under colour of the duty"."

45. In Om Prakash and others vs. State of Jharkhand and Anr. (supra) this Court, after referring to various decisions, pertaining to the police excess, explained the scope of protection under Section 197 of the Code of Criminal Procedure as follows:

"32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant Singh [AIR 1960 SC 266]). The protection given under Section 197 of the Code 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 (Ganesh Chandra Jew [(2004) 8 SCC 40]). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood."(emphasis supplied)

46. In Sankaran Moitra v. Sadhna Das and Another 22 the majority referred to H.H.B Gill v. R23, H.H.B Gill v. Emperor24;

Shreekantiah Ramayya Munippali v. State of Bombay 25; Amrik Singh v. State of Pepsu26; Matajog Dobey v. H.C. Bhari27; Pukhraj v. State of Rajasthan 28; B. Saha and Others v. M.S. Kochar29; Bakhshish Singh Brar v. Gurmej Kaur 30; Rizwan Ahmed Javed Shaikh and Others v. Jammal Patel and Others 31 and held :

"25. The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court

referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in

22. (2006) 4 SCC 584

23. AIR 1948 PC 128,

24. AIR 1947 FC 9

25. AIR 1955 SC 287

26. AIR 1955 SC 309

27. AIR 1956 SC 44

28. (1973) 2 SCC 701

29. (1979) 4 SCC 177

30. (1987) 4 SCC 663

31. (2001) 5 SCC 7 that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of learned counsel for the complainant that this is an eminently fit case for grant of such sanction."

47. The dissenting view of C.K. Thakkar J. in Sankaran Moitra (supra) supports the contention of Mr. Luthra to some extent.

However, we are bound by the majority view. Further more even the dissenting view of C.K. Thakkar, J was in the context of an extreme case of causing death by assaulting the complainant.

48. In K.K. Patel and Another vs. State of Gujarat and Anr. 32 this Court referred to Virupaxappa Veerappa Kadampur (supra) and held:-

> "17. The indispensable ingredient of the said offence is that the offender should have done the act "being a public servant". The next ingredient close to its heels is that such public servant has acted in disobedience of any legal direction concerning the way in which he should have conducted as such public servant. For the offences under Section 167 and 219 IPC the pivotal ingredient is the same as for the offence under Section 166 IPC. The remaining offences alleged in the complaint, in the light of the averments made therein, are ancillary offences to the above and all the offences are parts of the same transaction. They could not have been committed without there being at least the colour of the office or authority which the appellants held."

49. Mr. Poovayya argued that the complaint filed by the respondent against the accused appellant was in gross abuse of process, frivolous and malafide. Controverting the allegation of the

32. (2000) 6 SCC 195 respondent in his complaint, of police excesses while the respondent was in police custody between 27 th February, 2013 and 14th March, 2013 in connection with Crime No12/2012, Mr. Poovayya referred to the order of the learned Chief Metropolitan Magistrate dated 28 th February, 2013 in the said crime case, observing that the respondent had not complained of any ill-treatment by the police.

50. Mr. Poovayya submitted that the learned Chief Metropolitan Magistrate had, in any case, passed an order for medical examination of the respondent in view of his complaint of ill-treatment, but the medical reports, upon such examination, showed that there was no injury on the respondent. Mr. Poovayya argued that the accused appellant had been arrayed as accused vindictively, out of vengeance, since the accused appellant had, in his capacity as Deputy Commissioner of Police (Central Crime Branch), submitted an affidavit in the Habeas Corpus Petition filed by the respondent's father in the Karnataka High Court. The said affidavit led to the dismissal of the Habeas Corpus Petition.

51. Citing the judgment of this Court in State of Haryana and Others v. Bhajan Lal and Others 33, Mr. Poovayya argued that where a criminal proceeding is manifestly prompted by malafides and instituted with the ulterior motive of vengeance due to private or personal grudge, power under Section 482 of the Criminal Procedure Code ought to be exercised to prevent abuse of the process of Court and/or to secure the ends of justice.

33. 1992 Suppl. (1) SC 335

52. In State of Orissa vs. Ganesh Chandra Jew (supra) cited by Mr. Poovayya, this Court had, in similar circumstances, referred to and followed Bhajan Lal (supra) and held:

> "..the factual scenario as indicated above goes to show that on 28-2-1991 the respondent was produced before the Magistrate. He was specifically asked as to

> whether there was any ill-treatment. Learned SDJM specifically records that no complaint of any ill-treatment was made. This itself strikes at the credibility of the complaint.. though there are several other aspects highlighted in the version indicated in the complaint and the materials on record are there, we do not think it necessary to go into them because of the inherent improbabilities of the complainant's case and the patent male fides involved"

53. In K.K. Patel and Anr. vs. State of Gujarat and Anr. this Court held:

> "11. That apart, the view of the learned Single Judge of the High Court that no revision was maintainable on account of the bar contained in Section 397(2) of the Code, is clearly erroneous. It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide Amar Nath v. State of Haryana (1977) 4 SCC 137, Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551, V.C. Shukla v. State through CBI 1980 Supp SCC 92 and Rajendra Kumar Sitaram Pande v. Uttam (1999) 3 SCC 134). The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable.
>
> 12. Therefore, the High Court went wrong in holding that the order impugned before the Sessions Court was not revisable in view of the bar contained in Section 397(2) of the Code."

54. In D.T. Virupakshappa v. C. Subash (supra), cited by Mr. Poovayya, the question raised by the appellant before this Court was, whether the learned Magistrate could not have taken cognizance of the alleged offence which was of police excess in connection with investigation of the criminal case, without sanction from the State Government under Section 197 of the Code of Criminal Procedure and whether the High Court should have quashed the proceedings on that ground alone.

55. This Court held that the whole allegation of police excess in connection with the investigation of the criminal case, was reasonably connected with the performance of the official duty of the appellant. The learned Magistrate could not have, therefore, taken cognizance of the case, without previous sanction of the State Government. This Court found that the High Court had missed this crucial point in passing the impugned order, dismissing the application of the concerned policeman under Section 482 of the Code of Criminal Procedure.

56. In Ganesh Chandra Jew (supra), the Magistrate had, as in this case, specially recorded that there was no complaint of any ill- treatment. This Court was of the view that continuance of the proceeding would amount to the abuse of the process of law. Accordingly, this Court set aside the judgment of the High Court whereby the High Court refused to exercise its power under Section 482

of the Criminal Procedure Code to quash an order of sub- Divisional Judicial Magistrate, in a complaint against police officials, without sanction under Section 197 of the Criminal Procedure code.

57. Devinder Singh & Ors. v. State of Punjab through CBI (supra) cited by Mr. Luthra is clearly distinguishable as that was a case of killing by the police in fake encounter. Satyavir Singh Rathi, Assistant Commissioner of Police & Ors. v. State Thr. CBI (supra) also pertains to a fake encounter, where the deceased was mistakenly identified as a hardcore criminal and shot down without provocation. The version of the police, that the police had been attacked first and had retaliated, was found to be false. In the light of these facts, that this Court held that it could not, by any stretch of imagination, be claimed by anybody that a case of murder could be within the expression "colour of duty". This Court dismissed the appeals of the concerned policemen against conviction, inter alia, under section 302 of Indian Penal Code, which had duly been confirmed by the High Court. The judgment is clearly distinguishable.

58. The Judgment of this Court in State of Andhra Pradesh v. N. Venugopal (supra) is distinguishable in that the policemen concerned, being the Sub Inspector, Head Constable and a Constable attached to a police station had without warrant illegally detained the complainant for interrogation under Section 161 of the Criminal Procedure Code in connection with a private complaint of house break and theft, assaulted him along with the private complainant to extract statements and left him in an injured condition.

59. In the context of aforesaid, this Court held that an act is not "under" a provision of law merely because the point of time at which it is done coincides with the point of time when some act in the exercise of the powers granted by the provision or in performance of the duty imposed by it. To be able to say that an act is done "'under"

> a provision of law, one must discover the existence of a reasonable relationship between the provisions and the act. In the absence of such a relation, the act cannot be said to be done under the particular provision of law. It cannot be said that beating a person suspected of a crime or confining him or sending him away in an injured condition, at a time when the police were engaged in investigation, were acts done or intended to be done under the provisions of the Madras District Police Act or the Criminal Procedure Code or any other law conferring powers on the police. It could not be said that the provisions of Section 161 of the Criminal Procedure Code authorised the police officer examining a person to beat him or to confine him for the purpose of inducing him to make a particular statement.

60. In Bhanuprasad Hariprasad Dave v. State of Gujarat (supra) the Head Constable concerned was accused of preparing a false report with the dishonest intention of saving a person from whom ganja had been seized, after obtaining illegal gratification. The Court held that demand and/or acceptance of illegal gratification could not be said to be an act done under colour of duty. Significantly, the concerned policemen had been tried and convicted and their conviction was affirmed by the High Court. The concerned Head Constable was seeking bail in this Court.

61. The Judgment in State of Maharashtra v. Atma Ram (supra), was rendered in an appeal from a judgment and order of the High Court, whereby the High Court had reversed the conviction of the concerned policemen under Sections 330, 342, 343 and 348 of the Indian Penal Code, holding the prosecution to be barred under Section 161(1) of the Bombay Police Act. Allowing the appeal of the State, this Court held that Section 64(b) which confers duty on every police officer to obtain intelligence concerning the commission of cognizable offences or designs to commit such offences and to take such other steps to bring offenders to justice or to prevent the commission of cognizable and non cognizable offences, did not authorise any police officer to beat persons in the course of examination for the purpose of inducing them to make any particular statement or to detain such persons. The acts complained were factually found not to have been done under colour of any duty or authority. The Order of the High Court acquitting the concerned policemen was thus, set aside.

62. In Bakhshish Singh Brar v. Gurmej Kaur (supra), the question raised before this Court was, whether while carrying out investigation in performance of duty as a policeman, it was necessary for the concerned policeman to conduct investigation in such a manner as would result in injury and death. This Court held that trial of a police officer accused of causing grievous injury and death in conducting raid and search, need not to be stayed for want of sanction for prosecution of the police officer, at the preliminary stage, observing that criminal trial should not be stayed at the preliminary stage in every case, as it might cause damage to the evidence. The Court observed that if necessary the question of sanction might be agitated at a later stage.

63. In Om Prakash and others v. State of Jharkhand and Anr. (supra) this Court held:

> "34. In Matajog Dobey(AIR 1956 SC 44) the Constitution Bench of this Court was considering what is the scope and meaning of a somewhat similar expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" occurring in Section 197 of the Criminal Procedure Code (5 of 1898). The Constitution Bench observed that 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. On the question as to which act falls within the ambit of abovequoted expression, the Constitution Bench concluded that there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim that he did it in the course of performance of his duty. While dealing with the question whether the need for sanction has to be considered as soon as the complaint is lodged and on the allegations contained therein, the Constitution Bench referred to Hori Ram Singh (AIR 1939 FC 43) and observed that at first sight, it seems as though there is some support for this view in Hori Ram Singh (AIR 1939 FC 43) because Sulaiman, J. has observed in the said judgment that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution and Varadachariar, J. has also stated that: (Matajog Dobey case (AIR 1956 SC44), AIR p. 49, para 20) "20. ... the question must be determined with reference to the nature of the allegations made against the public servant in the criminal

proceedings." .....

The legal position is thus settled by the Constitution Bench in the above paragraph. Whether sanction is necessary or not may have to be determined from stage to stage. If, at the outset, the defence establishes that the act purported to be done is in execution of official duty, the complaint will have to be dismissed on that ground.

.....

42. It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial. This Court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognised as legal by our criminal justice administration system. They amount to State-sponsored terrorism. But, one cannot be oblivious of the fact that there are cases where the police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact. In such circumstances, while the police have to do their legal duty of arresting the criminals, they have also to protect themselves. The requirement of sanction to prosecute affords protection to the policemen, who are sometimes required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. Sanction must be a precondition to their prosecution. It affords necessary protection to such police personnel. The plea regarding sanction can be raised at the inception.

43. In our considered opinion, in view of the facts which we have discussed hereinabove, no inference can be drawn in this case that the police action is indefensible or vindictive or that the police were not acting in discharge of their official duty. In Zandu Pharmaceutical Works Ltd. [(2005) 1 SCC 122] this Court has held that the power under Section 482 of the Code should be used sparingly and with circumspection to prevent abuse of process of court but not to stifle legitimate prosecution. There can be no two opinions on this, but, if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of court, the power under Section 482 of the Code must be exercised and proceedings must be quashed. Indeed, the instant case is one of such cases where the proceedings initiated against the police personnel need to be quashed."

64. In Pukhraj v. State of Rajasthan (supra) the accused Post Master General, Rajasthan had allegedly kicked and abused a union leader who had come to him when he was on tour, to submit a representation. This Court held that Section 197 of the Code of Criminal Procedure, which is intended to prevent a public servant from being harassed does not apply to acts done by a public servant in his private capacity. This Court however left it open to the accused public servant to place materials on record during the trial to show that the acts complained of were so interrelated with his official duty as to attract the protection of Section 197 of the Criminal Procedure Code.

65. In Rizwan Ahmed Javed Shaikh and others v. Jammal Patel and Others34, this Court held that where the gravamen of the charge was failure on the part of the accused policemen to produce the

complainants, who were in their custody, before the Judicial Magistrate, the offence alleged was in their official capacity, though it might have ceased to be legal at a given point of time, and the accused police officers would be entitled to the benefit of Section 197(2) of the Criminal Procedure Code.

66. The Judgment in B. Saha v. M.S. Kochar (supra) was rendered in the context of allegations against Customs Authorities of misappropriation or conversion of goods. This Court held that while the seizure of goods by the concerned custom officers was an act committed in discharge of official duty, the subsequent acts of misappropriation or conversion of the goods could not be said to be viewed as under the colour of official duty. Accordingly this Court

34. (2001) 5 SCC 7 held that sanction for prosecution was not necessary.

67. The law relating to the requirement of sanction to entertain and/or take cognizance of an offence, allegedly committed by a police officer under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, is well settled by this Court, inter alia by its decisions referred to above.

68. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate government.

69. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act.

70. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a police man assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

71. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of government

sanction for initiation of criminal action against him.

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

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

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

75. On the question of the stage at which the Trial Court has to examine whether sanction has been obtained and if not whether the criminal proceedings should be nipped in the bud, there are diverse decisions of this Court.

76. While this Court has, in D.T. Virupakshappa (supra) held that the High Court had erred in not setting aside an order of the Trial Court taking cognizance of a complaint, in exercise of the power under Section 482 of Criminal Procedure Code, in Matajog Dobey (supra) this Court held it is not always necessary that the need for sanction under Section 197 is to be considered as soon as the complaint is lodged and on the allegations contained therein. The complainant may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty and/or under colour of duty. However the facts subsequently coming to light in course of the trial or upon police or judicial enquiry may establish the necessity for sanction. Thus, whether sanction is necessary or not may have to be determined at any stage of the proceedings.

77. It is well settled that an application under Section 482 of the Criminal Procedure Code is maintainable to quash proceedings which are ex facie bad for want of sanction, frivolous or in abuse of process of court. If, on the face of the complaint, the act alleged appears to have a reasonable relationship with official duty, where the criminal proceeding is apparently prompted by mala fides and instituted with ulterior motive, power under Section 482 of the Criminal Procedure Code would have to be exercised to quash the proceedings, to prevent abuse of process of court.

78. There is also no reason to suppose that sanction will be withheld in case of prosecution, where there is substance in a complaint and in any case if, in such a case, sanction is refused, the aggrieved complainant can take recourse to law. At the cost of repetition it is reiterated that the records of the instant case clearly reveal that the complainant alleged of police excesses while the respondent was

in custody, in the course of investigation in connection with Crime No.12/2012. Patently the complaint pertains to an act under colour of duty.

79. Significantly, the High Court has by its judgment and order observed "it is well recognized principle of law that sanction is a legal requirement which empowers the Court to take cognizance so far as the public servant is concerned. If at all the sanction is absolute requirement, if takes cognizance it becomes illegal therefore an order too overcome any illegality the duty of the magistrate is that even at any subsequent stages if the sanction is raised it is the duty of the Magistrate to consider".

80. In our considered opinion, the High Court clearly erred in law in refusing to exercise its jurisdiction under Section 482 of the Criminal Procedure Code to set aside the order of the Magistrate impugned taking cognizance of the complaint, after having held that it was a recognized principle of law that sanction was a legal requirement which empowers the Court to take Cognizance. The Court ought to have exercised its power to quash the complaint instead of remitting the appellant to an application under Section 245 of the Criminal Procedure Code to seek discharge.

81. The appeal is allowed. The judgment and order under appeal is set aside and the complaint is quashed for want of sanction.

.....J. [R. BANUMATHI] .....J. [INDIRA BANERJEE] JUNE 18, 2020 NEW DELHI.