A. Sreenivasa Reddy vs Rakesh Sharma on 8 August, 2023

Author: B.R. Gavai

Bench: B.R. Gavai

2023 INSC 682 REPO

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2339 OF 2023
(Arising out of S.L.P. (Criminal) No. 7542 of 202

A. SREENIVASA REDDY …A

VERSUS

RAKESH SHARMA & ANR. …Res

JUDGMENT

J.B. PARDIWALA, J.:

1. Leave granted.

2. This appeal arises from the judgment and order passed by a learned Single Judge of the High Court for the State of Telangana dated 20.06.2022 in the Criminal Petition No. 6782 of 2019 filed by the appellant herein by which the High Court rejected the petition and thereby declined to quash the criminal proceedings instituted against the appellant for the offence punishable under Sections 120-B r/w 420, 468 and 471 respectively of the Indian Penal Code, 1860 (for short, 'the 15:45:16 IST Reason:

IPC').

FACTUAL MATRIX

3. The appellant herein (Original Accused No. 2) at the relevant point of time was serving as an Assistant General Manager, State Bank of India, Overseas Bank (Bank), Hyderabad. He is alleged to have conspired with other co-accused to cheat the Bank

by sanctioning a corporate loan of Rs. 22.50 crore in favour of M/s Sven Genetech Limited, Secunderabad (Original Accused No. 1).

4. It appears from the materials on record that the company referred to above had applied for loan for the purpose of purchase of new equipments/implementation of the expansion programme. The company had also applied with the Bank for loan credit limit of Rs. 5 crore for the purpose of purchase of raw material from the domestic market and cash credit limit of Rs. 20 crore for using as working capital. It is the case of the prosecution that the facilities sanctioned by the Bank were not utilised by the company for the purposes for which it was sanctioned and the company diverted the funds for its personal benefits and to clear its old debts.

5. The case against the appellant herein is that he was instrumental in approving the release of corporate loan without compliance of all the principle/disbursement conditions. He is also alleged to have approved the release of cash credit limit of Rs. 10 crore on the recommendation of one Shri Kuppa Srinivas (Original Accused No. 3 Regional Manager), despite having knowledge of non-instalment of machinery proposed to be purchased out of the corporate loan amounts. It is also alleged that the appellant herein hastily approved the release of Rs. 10 crore out of the sanctioned cash credit limit of Rs. 20 crore with the fraudulent intention to cause wrongful gain to the Original Accused Nos. 1-4 and others.

6. In the aforesaid context, the Central Bureau Investigation (CBI) registered a First Information Report dated 30.10.2013 bearing Crime No. RC 6(E)/2013 against the appellant herein and other co-accused for the offences punishable under Sections 120-B r/w 420, 468 and 471 respectively of the IPC and Section 13(2) r/w Section 13(1) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act, 1988').

7. Upon conclusion of the investigation by the CBI, chargesheet was filed in the Court of the Principal Special Judge (CBI Cases) at Hyderabad on 30.12.2014 against in all six persons including the appellant herein.

8. It appears that by an order dated 13.02.2015, the Chief General Manager (MCG-I), SBI declined to accord sanction under Section 19 of the PC Act, 1988 to prosecute the appellant herein for the offences punishable under the PC Act, 1988.

9. The very same authority referred to above, who had earlier declined to accord sanction, later reviewed its earlier order dated 13.02.2015 referred to above and by an order dated 11.04.2015 accorded sanction to prosecute the appellant herein for the offences punishable under PC Act, 1988. Such sanction was accorded under the provisions of Section 19 of the PC Act, 1988. No sooner, the order according sanction referred to above came on record, then the Special Court at Hyderabad took cognizance of the offence enumerated above against the appellant herein and 13 other co-accused. It appears that the appellant herein questioned the legality and validity of

the order of grant of sanction before the High Court of Telangana by filing the Writ Petition No. 33297 of 2016.

10. A learned Single Judge of the High Court allowed the writ petition filed by the appellant herein holding that the sanctioning authority once having declined to accord sanction could not have taken its earlier order in review and granted fresh sanction to prosecute the appellant. The High Court ultimately by order dated 30.10.2018 allowed the writ petition and quashed the order of grant of sanction.

11. It appears that the CBI being aggrieved with the above referred order passed by the learned Single Judge of High Court preferred the Writ Appeal No. 119 of 2019 and questioned the legality and validity of the judgment and order passed by the learned Single Judge.

12. The Intra-Court appeal filed by the CBI failed vide order dated 15.07.2019 and thereby the order passed by the learned Single Judge came to be affirmed.

13. The CBI accepted the order passed by the High Court and thought fit not to carry it further.

14. Pursuant to the orders dated 30.10.2018 and 15.07.2019 respectively, referred to above, the appellant preferred a discharge application before the Special Court under Section 239 of the Code of Criminal Procedure (for short, 'the CrPC').

15. The Special Court at Hyderabad by its order dated 30.08.2019 discharged the appellant herein from the prosecution under the PC Act, 1988 for want of sanction. The Special Court, however, declined to discharge the appellant for the offences under the IPC. The Special Court relied on the decision of this Court in the case of Parkash Singh Badal and Another v. State of Punjab and Others reported in (2007) 1 SCC 1.

16. The relevant part of the order passed by the Special Judge reads thus:

"Considering the facts and circumstances of the case and in view of the orders of the Hon'ble High Court of Judicature at Hyderabad in W.P. No. 33279/16 dated:30.10.2018, the sanction proceedings issued against A2 for the offences under Section 13(2) r/w 13(1)(d) of PC Act are set aside and as such A2 is liable to be discharged for the said offence under 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. As far as the offences alleged against A2 under the provisions of IPC, the same are to be continued and the accused No. 2 is to be tried for the said offence along with other accused since the sanction under Section 197 is not required to prosecute the accused No. 2 for the alleged offences, in view of the above referred judgment of Hon'ble Apex Court in Prakash Singh Badal's case.

Therefore, the accused No.2 is discharged for the offence under Section 13(2) r/w 13(1)(d) of the P.C. Act, in view of the orders of the Hon'ble High Court of Judicature at Hyderabad in W.P. No. 33297/16 dt.30.10.2018 and as far as the offences under Section 120-B, 420, 468 and 471 of IPC are concerned the accused No.2 is liable to be prosecuted along with other accused."

17. Feeling aggrieved with the aforesaid, the appellant herein went before the High Court by filing the Criminal Petition No. 6782 of 2019 with a prayer that he should be discharged from the entire prosecution or to put in other words, he should also be discharged for the offences under the IPC as there is no sanction accorded by sanctioning authority under Section 197 of the CrPC.

18. The High Court adjudicated the Criminal Petition No. 6782 of 2019, filed by the appellant herein and by its impugned order dated 20.06.2022 rejected the same.

19. The relevant findings recorded by the High Court, while rejecting the petition filed by the appellant herein reads thus:

"23. It is relevant to note that in the order dated 30.08.2019 in C.C.No.17 of 2015, the trial Court has specifically mentioned that the discharge application vide Crl.M.P.No.519/2015 filed by the petitioner herein for the IPC offences is pending. During the course of arguments, the said facts were admitted by the learned counsel for the petitioner herein. Therefore, the petitioner herein cannot pursue parallel remedies. As discussed supra, the Investigating Officer has recorded the statements of 65 witnesses under Section 161 of Cr.P.C. and collected 545 documents. On consideration of the same only, he has laid charge sheet against the petitioner and other accused. The contents of the charge sheet constitutes the offences alleged against the petitioner herein. The defences taken by the petitioner herein cannot be considered in a petition filed under Section 482 of Cr.P.C. The petitioner herein has to face trial and prove his innocence.

24. In this regard, it is apt to refer to the decision rendered by the Hon'ble Supreme Court in Kamal Shivaji Pokarnekar v.

The State of Maharashtra (AIR 2019 SC 847), wherein the Apex Court has categorically held that quashing criminal proceedings was called for only in a case where complaint did not disclose any offence, or was frivolous, vexatious, or oppressive. If allegations set out in complaint did not constitute offence of which cognizance had been taken by Magistrate, it was open to High Court to quash same. It was not necessary that, a meticulous analysis of case should be done before trial to find out whether case would end in conviction or acquittal. If it appeared on a reading of complaint and consideration of allegations therein, in light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for High Court to interfere. The defences that might be available, or facts/aspects which when established during trial, might lead to acquittal, were not grounds for quashing complaint at threshold. At that stage, only question relevant was

whether averments in complaint spell out ingredients of a criminal offence or not. The Court has to consider whether complaint discloses that prima facie, offences that were alleged against Respondents. Correctness or otherwise of said allegations had to be decided only in trial. At initial stage of issuance of process, it was not open to Courts to stifle proceedings by entering into merits of the contentions made on behalf of Accused. Criminal complaints could not be quashed only on ground that, allegations made therein appear to be of a civil nature. If ingredients of offence alleged against Accused were prima facie made out in complaint, criminal proceeding shall not be interdicted.

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26. In view of law laid down by the Hon'ble Apex Court and in view of the above said discussion, coming to the present crime as there are serious and specific allegations, this Court is not inclined to quash the proceedings against the petitioner herein, A.2 in C.C.No.17 of 2015 pending on the file of the Special Judge for CBI Cases at Hyderabad.

27. In the result, the Criminal Petition is dismissed. However, as the subject Calendar Case is of the year 2015, the Special Judge for CBI Cases at Hyderabad, is directed to dispose of the said case (C.C.No.17 of 2015) in accordance with law within a period of three (3) months from the date of receipt of a copy of this order."

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

SUBMISSIONS ON BEHALF OF THE APPELLANT

21. Mr. D. Ramakrishna Reddy, the learned counsel appearing for the appellant vehemently submitted that the sanction under Section 197 of the CrPC is mandatory to prosecute the appellant for the offences under Sections 120-B, 420, 468 and 471 respectively of the IPC. He would submit that as sanction to prosecute the appellant under the provisions of the PC Act, 1988 came to be declined, the appellant cannot now be prosecuted for the offences under IPC without valid sanction under Section 197 of the CrPC.

22. The learned counsel further submitted that the appellant was also subjected to a departmental inquiry. The departmental inquiry was by and large on the very same charges on which the appellant is now sought to be prosecuted in the Court of the Special Judge at Hyderabad. He pointed out that the appellant came to be exonerated of all the charges in the departmental inquiry as evident from the report of the inquiry officer dated 09.06.2014.

23. Mr. Reddy in support of his aforesaid submissions has placed reliance on three decisions of this Court (i) Parkash Singh Badal (supra), (ii) A. Srinivasulu v. The State rep. by the Inspector of Police, Criminal Appeal No. 2417 of 2010 decided on 15.06.2023 and (iii) Station House Officer, CBI/ACB/Bangalore v. B.A. Srinivasan and Another, reported in (2020) 2 SCC 153.

24. In such circumstances referred to above, the learned counsel appearing for the appellant prayed that continuation of the criminal prosecution for the offences under the IPC would be nothing but a gross abuse of the process of law and would lead to serious miscarriage of justice. He prayed that the impugned order passed by the High Court be set aside and the appellant may be discharged from the criminal prosecution.

SUBMISSIONS ON BEHALF OF THE CBI (RESPONDENT NO. 2)

25. Ms. Aishwarya Bhati, the learned Additional Solicitor General (ASG) appearing for the CBI submitted that although the sanctioning authority declined to accord sanction under Section 19 of the PC Act, 1988 to prosecute the appellant for the offences punishable under the provisions of the PC Act, 1988 yet, that by itself is not sufficient to discharge the appellant even from the offences punishable under the IPC.

26. The learned ASG further submitted that the sanction required under Section 197 of the CrPC and the sanction required under the PC Act, 1988 stand on different footings whereas, sanction under the IPC in terms of the CrPC is required to be granted by the State or Central Government as the case may be; under the PC Act, 1988, it can be granted also by the authorities specified in Section 19 thereof.

27. She submitted that the CBI at no point of time had prayed for sanction under Section 197 of the CrPC to prosecute the appellant for the offence under the IPC. All that was prayed for, was for sanction under Section 19 of the PC Act, 1988, which once was declined and thereafter, was accorded but ultimately the issue in regard to sanction under Section 19 of the PC Act, 1988 came to be set at rest by the High Court. According to Ms. Bhati, the entire submission canvassed on behalf of the appellant that the sanction under Section 197 of the CrPC was also prayed for and was declined, proceeds on an erroneous impression or footing.

28. In this regard, Ms. Bhati placed on record the letter dated 21.12.2014 addressed by the CBI to the Chief Vigilance Officer, State Bank of India, requesting for sanction under Section 19 of the PC Act, 1988. The letter referred to above reads thus:

> "To The Chief Vigilance Officer State Bank of India Vigilance Department, Corporate Centre, P.B.No.12, Mumbai-400 021.
>
> Sub : CBI Report in RC.6(E)/2013 of CBI, BS&FC, Bangalore Sir, I am forwarding herewith the CBI Report in the criminal case registered vide RC.6(E)/2013-BLR incorporating therein the allegations, facts disclosed during investigation, and the result of the investigation.
>
> 2. The investigation has revealed that there is sufficient material evidence on record to initiate action against the following persons:

(i) Prosecution of Shri Venkata Ramana Kalavakolanu (A-1), Managing Director, M/s. Sven Genetech Ltd., and M/s Jupiter Bioscience Ltd., Secunderabad; Shri A. Srinivasa Reddy (A-2), Assistant General Manager, State Bank of India, Ananthpur Regional Office, Ananthpur, Andhra Pradesh; Shri Kuppa Srinivas (A-3), Chief Manager & Relationship Manager, State Bank of India, Andhra Pradesh, M/s Sven Genetech Ltd. (A-4), No.10-2-71 & 72/1, Road No.3, West Marredpally, Secunderabad, Shri M.V. Ravi (A-5), Former Asst. Vice President, Marketing, M/s Jupiter Bioscience Ltd., Secunderabad, Shri E. Narasimha Reddy (A-

6), Managing Director, M/s Roots Medicare Pvt. Ltd., No.182, MIGH, Bharath Nagar Colony, Hyderabad, Shri P.V. Rama Rao (A-10), formerly worked as Senior Executive Accounts, M/s Jupiter Biosciences Ltd., Secunderabad, Shri P. Giridhar Goud (A-11), formerly worked as Executive-

Accounts, M/s Jupiter Biosciences Ltd., Secunderabad, Shri Sunder Hari Prasad (A-12), formerly worked as Executive- Accounts, M/s Jupiter Biosciences Ltd, Secunderabad, Shri M. Tulsi Ram (A-13), formerly worked as Manager, M/s Jupiter Biosciences Ltd., Secunderabad, Shri V.A.R. Chandra Murthy (A-14), formerly worked as Accounts Supervisor, M/s Jupiter Bioscience ltd., Hyderabad, Shri Shyam Sunder Suri (A-15), Proprietor, M/s V.R. Associates, No.10-3-315, Street No.6, East Marredpally, Hyderabad, Shri D.V.S. Suryanarayana (A-16), formerly Proprietor, M/s Themis Enterprises, Hyderabad, Shri Rajendra Raju (A-17), formerly Proprietor, M/s Suraj Industries, Hyderabad u/s. 120-B r/w 420, 468 & 471 IPC and U/s 13(2) r/w 13(1)(d) of PC Act, 1988 and substantive offences thereof.

(ii) Regular Departmental Action for imposition of major penalty against Shri G. Suresh, Deputy Manager, State Bank of India, Yerraguntla (M), Kadappa District, Andhra Pradesh.

(iii) Such Action against Shri U. Sudesh Kumar (A-7), Chief Manager, SBI, Commercial Branch, Koti, Hyderabad and Shri K.D. Menon, DGM, SBI, SAM, Corporate Centre, Mumbai.

3. You are requested to obtain the sanction for prosecution of Shri A. Srinivasa Reddy (A-2), Assistant General Manager, State Bank of India, Ananthpur Regional Office, Ananthpur, Andhra Pradesh and Shri Kuppa Srinivas (A-3), Chief Manager & Relationship Manager, State Bank of India, Anaparthi East, Godavari District, Andhra Pradesh, from the competent authority as mandated u/s 19(1)(c) of the Prevention of Corruption Act, 1988.

4. The draft Articles of Charges and draft statements of imputation together with list of witnesses, list of documents, copies of statements of witnesses and copies of documents, for initiating departmental proceedings for imposition of major penalty against the accused person mentioned at Para No.2 (ii); are enclosed herewith. It is also requested to intimate the outcome of the RDA instituted against the above said officers on quarterly basis and immediately after final disposal of the RDA proceedings along with copy of the order of the Disciplinary Authority.

5. The CBI Report may please, be treated as a Confidential Document, and no reference of the same may be made in the charges, statement of imputations, or order for initiating departmental proceedings, if any, on the above said delinquent officials. Since the CBI is exempted under RTI Act,2005, vide Notification No. F. No.1/3/2011-IR dated 09.06.11 of the Govt. of India, in case, any applicant seek copy of the CBI Report or part thereof under the RTI Act, 2005, the same may be refused.

6 . A copy of the CBI Report alongwith its enclosures has also been forwarded to the Joint Secretary, Banking Division, Department of Economic Affairs, Ministry of Finance, Government of India, Jeevandeep Building, Sansad Marg, New Delhi and to the Director, Central Vigilance Commission, Satarkta Bhavan, GPO Complex, Block-A, INA, New Delhi, for information and necessary action.

7. The sanctioning authority, if required, may call for the Investigating Officer to explain the evidence, as that would help the sanctioning authority in appreciating the evidence properly and also to give evidence before the jurisdictional court during the trial, at a later stage.

8. In order to prove the sanction for prosecution, it is requested that the name of the officer working under the sanctioning authority who is conversant with the case and can prove the signatures and application of mind by the sanctioning authority may be intimated to this office, to cite him as a witness. You are requested to provide certified copies of relevant extract of the delegation of powers to establish the competence of the issuing authority to accord sanction for prosecution.

9 . The receipt of the CBI Report may kindly be acknowledged.

Yours faithfully, (Dr. Surya Thankappan Head of Branch CBI, BS&FC, Bangalore)”

29. The aforesaid letter has been incorporated by us in our judgment only to indicate that there is no reference of Section 197 of the CrPC in it.

30. In such circumstances referred to above, the learned ASG prayed that there being no merit in this appeal, the same may be dismissed.

SUBMISSIONS ON BEHALF OF THE BANK (RESPONDENT NO. 1)

31. Mr. Sidharth Sangal, the learned counsel appearing for the Bank vehemently submitted that the application of the appellant, seeking discharge from the offences under the PC Act, 1988 has already been allowed, however, his application, seeking discharge from the offences under the IPC has been dismissed by order dated 26.07.2022 of the Ld. CBI Court and the said order is not under challenge before this Court.

32. He further submitted that the High Court in its impugned order dated 20.06.2022 clearly records that by proceedings dated 13.02.2015, the sanction to prosecute was refused under the provisions of PC Act, 1988 and vide proceedings dated 11.04.2015 the sanction to prosecute was accorded under the provisions PC Act, 1988, thus, it is clear that no sanction was sought for or

accorded or refused, specifically, under Section 197 of the CrPC with regard to the offences punishable under the IPC.

33. The learned counsel further submitted that the consistent stand of the CBI before the CBI Court and the High Court has been that no prior sanction under Section 197 of the CrPC is required to prosecute the appellant for offences punishable under the IPC, as there is no legal obligation for seeking such a sanction.

34. It was submitted that it is incorrect on the part of the appellant to state that he has been exonerated in the departmental proceedings. The appellant, was ultimately, given 'Administrative Warning' in respect of the charges against him which were levied for the appellant's failure to discharge his duties with utmost devotion and diligence and acting in a manner unbecoming of a Bank Official and highly prejudicial to the Bank's interest – the said charges were neither of Sections 420, 468, 471 or 120-B of the IPC.

35. It was also argued that in any case, the charges not being identical, the fate of the departmental proceedings cannot weigh at all in respect of criminal proceedings based on trial. Thus, the appellant cannot rely on the outcome of the departmental proceedings to seek quashing of the criminal case against him.

36. In the last, the learned counsel argued something very important. It was submitted that a bare reading of Section 197 of the CrPC clearly indicates that the Section 197 of the CrPC is only applicable to those 'public servants' who are removable with the sanction of the Government and to no other 'public servants'. Relying on the decision of this Court in the case of S.K. Miglani v. State (NCT of Delhi), reported in (2019) 6 SCC 111, it was submitted that the Manager of a Nationalised Bank though a public servant yet not removable from his office save by or with the sanction of the Government and hence cannot claim protection under Section 197 of the CrPC.

In such circumstances referred to above, the learned counsel prayed that there being no merit in the present appeal, the same may be dismissed.

ANALYSIS

37. Having heard the learned counsel appearing for the parties and having gone through the materials placed on record the following questions of law fall for our consideration:

> (i) Whether the appellant, serving in his capacity as an Assistant General Manager, State Bank of India, Overseas Bank, is removable from his office save by or with the sanction of the Government so as to make Section 197 of the CrPC applicable?
>
> (ii) Is it permissible for the Special Court (CBI) to proceed against the appellant for the offences punishable under the IPC despite the fact that the sanction under Section 19 of the PC Act, 1988 to prosecute the appellant for the offences under the PC Act, 1988, is not on record as the same came to be declined?

SECTION 197 OF THE CRPC

38. Section 197 of the 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, 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."

39. The Law Commission in its 41st Report has observed:

> "15.123. Section 197, as it now stands, applies to a public servant of the specified category only when he is holding office as such public servant. It does not apply to him after he has retired, resigned or otherwise left the service.....It appears to us that protection under the Section is needed as much after retirement of the public servant as before retirement. The protection afforded by the Section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecutions. It should be left to the Government to determine from that point of view the question of expediency of prosecuting any public servant."

40. Section 197 of the Cr PC provides that when any person who is or was a public servant, not removable from his office save by or with the sanction of the Central Government or State 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 duties, no Court shall take cognizance of such offence, except with the previous sanction of the appropriate Government.

41. Sub-section (1) of Section 197 of the CrPC shows that sanction for prosecution is required where any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty. Article 311 of the

Constitution lays down that no person, who is a member of a civil service of the Union or State or holds a civil post under the Union or State, shall be removed by an authority subordinate to that by which he was appointed. It, therefore, follows that protection of sub-section (1) of Section 197 of CrPC is available only to such public servants whose appointing authority is the Central Government or the State Government and not to every public servant.

42. The word 'sanction' has not been defined in the CrPC. The dictionary meaning of the word 'sanction' is as under:— "Webster's Third New Internal Dictionary: Explicit permission or recognition by one in Authority that gives validity to the act of another person or body; something that authorizes, confirms, or countenances.

The New Lexicon Webster's Dictionary: Explicit permission given by someone in Authority.

The Concise Oxford Dictionary: Encouragement given to an action etc., by custom or tradition; express permission, confirmation or ratification of a law etc; authorize, countenance, or agree to (an action etc.) Stroud's Judicial Dictionary: Sanction not only means prior approval; generally it also means ratification.

Words and Phrases: The verb 'sanction' has a distinct shade of meaning from 'authorize' and means to assent, concur, confirm or ratify. The word conveys the idea of sacredness or of Authority.

The Law Lexicon by Ramanath Iyer: Prior approval or ratification."

43. In 78 Corpus Juris Secundum at Page 579 different meanings have been given to the word as a noun and as a verb. As a noun it means penalty or punishment provided as a means of enforcing obedience to a law and in a wider sense an authorisation of any thing and it may convey the idea of authority. As a verb 'sanction' is defined as meaning to assent, concur, confirm or ratify. In U.S. v. Tillinghast D.G., reported in 55 F.2d 279, it was held that where legal rights are involved it is doubtful whether it should be construed as requiring less than an unmistakable expression of approval. In Section 197 of the CrPC, the word 'sanction' has been used as a verb and, therefore, it will mean to assent, to concur or approval.

44. The legislature has given great importance to sanction as is evident from the Scheme of the CrPC. Section 216 of the CrPC gives power to the Court to alter or add to any charge at any time before judgment is pronounced but sub-section (5) thereof provides that if the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded. This was also emphasised by the Privy Council in the leading case of Gokulchand Dwarka Das Morarka v. King, reported in AIR 1948 PC 82, where in para 9 it was observed as follows at Page 85:

> — "... The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute

> discretion to grant or withhold their sanction. They are not, as the High Court seem to have thought, concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted. ..."

45. The appellant was serving as an Assistant General Manager, State Bank of India, Overseas Bank at Hyderabad. State Bank of India is a Nationalised Bank. Although a person working in a Nationalised Bank is a public servant, yet the provisions of Section 197 of the CrPC would not be attracted at all as Section 197 is attracted only in cases where the public servant is such who is not removable from his service save by or with the sanction of the Government. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the Government. In this view of the matter, even if it is alleged that the appellant herein is a public servant, still the provisions of Section 197 of the CrPC are not attracted at all.

46. The question as to whether a Manager of Nationalised Bank can claim benefit of Section 197 of the CrPC is not res integra. This Court in K. Ch. Prasad v. Smt. J. Vanalatha Devi and Others reported in (1987) 2 SCC 52, had the occasion to consider the very same question in reference to one who claimed to be a public servant working in a Nationalised Bank. The application filed by the appellant therein questioned the maintainability of the prosecution for want of sanction under Section 197 of the CrPC, was rejected by the Metropolitan Magistrate and revision to the High Court also met the same fate. This Court, while dismissing the appeal held that though a person working in a Nationalised Bank is a public servant, the provisions of Section 197 are not attracted at all. In para 6 of the judgment, following has been held :

> (SCC p. 54) "6. It is very clear from this provision that this section is attracted only in cases where the public servant is such who is not removable from his office save by or with the sanction of the Government. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the government. In this view of the matter even if it is held that the appellant is a public servant still provisions of Section 197 are not attracted at all." (Emphasis supplied)

47. The aforesaid decision of this Court in K. Ch. Prasad (supra) has been quoted with approval in a later decision in the case of S.K. Miglani (supra). In this case, the appellant was working as a Manager in the Bank of Baroda, Faridabad Branch. A complaint in writing was lodged by the Director, Housing against the appellant. On the strength of the said complaint, the Kotla Mubarakpur Police Station registered a First Information Report for the offences under Sections 201, 409, 419, 420, 467, 468, 471 and 120-B respectively of the IPC. It was the case of the prosecution that the appellant therein and another co-accused in collusion with each other acted on a fake request of original allottee for cost reduction of a flat from Rs. 10.66 lakh to Rs. 7.77 lakh with the approval of the competent authority. Many other allegations were levelled in the said FIR. Upon completion of the investigation, chargesheet was submitted. The appellant filed an application before the ACMM, Saket Court, New Delhi in the FIR referred to above, stating that he being a public servant employed with the Nationlised Bank as a Manager, it was mandatory to seek sanction against him in terms of Section 197 of the CrPC.

48. It was argued before the Court that he may be discharged on account of non-compliance under Section 197 of the CrPC. The Chief Metropolitan Magistrate (South), Saket Court rejected the application filed by the appellant therein, seeking discharge for want of sanction. The matter reached up to this Court. This Court held in paras 10 and 12 respectively as under:

> "10. The appellant being a Manager in a nationalised bank whether can claim that before prosecuting him sanction is required under Section 197. The CMM having come to the opinion that the appellant having not satisfied that he was a public servant not removable from his office save by or with the sanction of the Government, Section 197 CrPC was not attracted with regard to the appellant. After coming to the above conclusions, it was not necessary for the CMM to enter into the question as to whether the acts alleged against the appellant were discharged in performance of official duty.
>
> xxx xxx xxx
>
> 12. The High Court in its impugned judgment has not adverted to the above aspect and has only confined to the discussion as to whether the acts alleged of the appellant were in discharge of official duty. The High Court also had relied on the judgment of this Court in Parkash Singh Badal [Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] . We, having come to the conclusion that the appellant being not a public servant removable from his office save by or with the sanction of the Government, sanction under Section 197 CrPC was not applicable. The appellant cannot claim protection under Section 197 CrPC. We are of the view that examination of further question as to whether the appellant was acting or purporting to act in the discharge of his official duty was not required to be gone into, when he did not fulfil conditions for applicability of Section 197(1) CrPC." (Emphasis supplied)

49. It is pertinent to note that the banking sector being governed by the Reserve Bank of India and considered as a limb of the State under Article 12 of the Constitution and also by virtue of Section 46A of the Banking Regulation Act, 1949, the appellant herein is deemed to be a "public servant' for the purpose of provisions under the PC Act, 1988. However, the same cannot be extended to the IPC. Assuming for a moment that the appellant herein should be considered as a "public servant" for the IPC sanction also, the protection available under Section 197 of the CrPC is not available to the appellant herein since, the conditions in built under Section 197 of the CrPC are not fulfilled.

50. Unfortunately, in the case on hand, the High Court also missed or overlooked the aforesaid aspect and confined its adjudication as to whether the acts alleged of the appellant were in discharge of the official duty.

Question No. 1 is answered accordingly.

51. It was vociferously argued by the learned counsel appearing for the appellant that as sanction under Section 19 of the PC Act, 1988 has not been granted, the appellant cannot not be prosecuted

for the offences under the IPC alone and he should be discharged from the criminal proceedings.

52. Section 19 of the PC Act, 1988 reads thus:

> "19. Previous sanction necessary for prosecution.— (1) No court shall take cognizance of an offence punishable under sections 7, 11, 13 and 15 alleged to have been committed by a public servant, 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 and is not removable from his office save by or with the sanction of the Central Government, of that 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 and is not removable from his office save by or with the sanction of the State Government, of that Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office:
>
> Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—
>
> (i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and
>
> (ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:
>
> Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:
>
> Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a

period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.--For the purposes of sub-section (1), the expression "public servant" includes such person--

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-

section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub- section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have

regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.— For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

53. Sanction contemplated under Section 197 of the CrPC concerns a public servant who "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" whereas, the offences contemplated in the PC Act, 1988 are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties.

54. The offences under the IPC and offences under the PC Act, 1988 are different and distinct. What is important to consider is whether the offences for one reason or the other punishable under the IPC are also required to be approved in relation to the offences punishable under the PC Act, 1988.

55. It is important to draw a distinction between an order of sanction required for prosecuting a person for commission of an offence under the IPC and an order of sanction required for commission of an offence under the PC Act, 1988.

56. In Kalicharan Mahapatra v. State of Orissa, reported in (1998) 6 SCC 411, this Court noted:

> "...The sanction contemplated in Section 197 of the Code concerns a public servant who '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', whereas the offences contemplated in the PC Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the former PC Act was materially imported in the new PC Act, 1988 without any change in spite of the change made in Section 197 of the Code..." (Emphasis supplied)

57. In Lalu Prasad alias Lalu Prasad Yadav v. State of Bihar reported in (2007) 1 SCC 4, this Court observed as under:

> "10. It may be noted that Section 197 of the CrPC and Section 19 of the PC Act, 1988 operate in conceptually different fields.

In cases covered under the Act, in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 of the CrPC, the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus with the discharge of duties. Position is not so in case of Section 19 of the Act." (Emphasis supplied)

58. Thus, although in the present case, the appellant has been discharged from the offences punishable under the PC Act, 1988 yet for the IPC offences, he can be proceeded further in accordance with law.

59. From the aforesaid, it can be said that there can be no thumb rule that in a prosecution before the court of Special Judge, the previous sanction under Section 19 of the PC Act, 1988 would invariably be the only pre- requisite. If the offences on the charge of which, the public servant is expected to be put on trial include the offences other than those punishable under the PC Act, 1988 that is to say under the general law (i.e. IPC), the court is bound to examine, at the time of cognizance and also, if necessary, at subsequent stages (as the case progresses) as to whether there is a necessity of sanction under Section 197 of the CrPC. There is a material difference between the statutory requirements of Section 19 of the PC Act, 1988 on one hand, and Section 197 of the CrPC, on the other. In the prosecution for the offences exclusively under the PC Act, 1988, sanction is mandatory qua the public servant. In cases under the general penal law against the public servant, the necessity (or otherwise) of sanction under Section 197 of the CrPC depends on the factual aspects. The test in the latter case is of the "nexus" between the act of commission or omission and the official duty of the public servant. To commit an offence punishable under law can never be a part of the official duty of a public servant. It is too simplistic an approach to adopt and to reject the necessity of sanction under Section 197 of the CrPC on such reasoning. The "safe and sure test", is to ascertain if the omission or neglect to commit the act complained of would have made the public servant answerable for the charge of dereliction of his official duty. He may have acted "in excess of his duty", but if there is a "reasonable connection" between the impugned act and the performance of the official duty, the protective umbrella of Section 197 of the CrPC cannot be denied, so long as the discharge of official duty is not used as a cloak for illicit acts.

60. Before, we close this matter, we would like to observe something which, this Court may have to consider sooner or later. The object behind the enactment of Section 19 of the PC Act, 1988 is to protect the public servants from frivolous prosecutions. Take a case wherein, the sanctioning authority at the time of declining to accord sanction under Section 19 of the PC Act, 1988 observes that sanction is being declined because the prosecution against the accused could be termed as frivolous or vexatious. Then, in such circumstances what would be its effect on the trial so far as the IPC offences are concerned? Could it be said that the prosecution for the offences under the PC Act, 1988 is frivolous but the same would not be for the offences under the IPC? We are not going into this question in the present matter as sanction initially was not declined on the ground that the prosecution against the appellant herein is frivolous or vexatious but the same was declined essentially on the ground that what has been alleged is mere procedural irregularities in discharge of essential duties. Whether such procedural irregularities constitute any offence under the IPC or not will be looked into by the trial court. What we have highlighted may be examined by this Court in

some other litigation at an appropriate time.

61. In overall view of the matter, we have reached to the conclusion that the appeal deserves to be dismissed and is hereby dismissed.

.....J. (B.R. GAVAI) .....J. (J.B. PARDIWALA) NEW DELHI;

AUGUST 08, 2023.