Devinder Singh & Ors vs State Of Punjab Through Cbi on 25 April, 2016

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Bench: Arun Mishra, V. Gopala Gowda

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE/ORIGINAL JURISDICTION

CRIMINAL APPEAL NO.190 OF 2003

Devinder Singh & Ors. … Appellants
Vs.
State of Punjab through CBI … Respondent

[With Criminal Appeal No.352/2016 @ SLP (Crl.) Nos.3324/2016 @ Crl.MP No.10040/2004, WP (Crl.) No.139/2012, Criminal Appeal No.353/2016 @ SLP (Crl.) No.3352/2006, Criminal Appeal No.354/2016 @ SLP (Crl.) No.4729/2012, Criminal Appeal No.355/2016 @ SLP (Crl.) No.4739/2012, Criminal Appeal No.356/2016 @ SLP (Crl.) No.4743/2012, Criminal Appeal No.357/2016 @ SLP (Crl.) No.4759/2012, Criminal Appeal No.358/2016 @ SLP (Crl.) No.5369/2012, Criminal Appeal No.360/2016 @ SLP (Crl.) No.5419/2012, Criminal Appeal No.361/2016 @ SLP (Crl.) No.5435/2012, Criminal Appeal No.362/2016 @ SLP (Crl.) No.5522/2012, Criminal Appeal No.363/2016 @ SLP (Crl.) No.5547/2012, Criminal Appeal No.364/2016 @ SLP (Crl.) No.5578/2012, Criminal Appeal No.365/2016 @ SLP (Crl.) No.5590/2012, Criminal Appeal No.366/2016 @ SLP (Crl.) No.5592/2012, Criminal Appeal No.367/2016 @ SLP (Crl.) No.5614/2012, Criminal Appeal No.368/2016 @ SLP (Crl.) No.5617/2012, Criminal Appeal No.369/2016 @ SLP (Crl.) No.5619/2012, Criminal Appeal No.371/2016 @ SLP (Crl.) No.5622/2012, Criminal Appeal No.373/2016 @ SLP (Crl.) No.5668/2012, Criminal Appeal No.374/2016 @ SLP (Crl.) No.5669/2012, Criminal Appeal No.375/2016 @ SLP (Crl.) No.5697/2012, Criminal Appeal No.377/2016 @ SLP (Crl.) No.5706/2012, Criminal Appeal No.378/2016 @ SLP (Crl.) No.5712/2012, Criminal Appeal No.379/2016 @ SLP (Crl.) No.5714/2012, Criminal Appeal No.380/2016 @ SLP (Crl.) No.5716/2012, Criminal Appeal No.381/2016 @ SLP (Crl.) No.5812/2012, Criminal Appeal No.382/2016 @ SLP (Crl.) No.6005/2012, Criminal Appeal No.383/2016 @ SLP (Crl.) No.6006/2012, Criminal Appeal No.384/2016 @ SLP (Crl.) No.6014/2012, Criminal Appeal No.385/2016 @ SLP (Crl.) No.6057/2012, Criminal Appeal No.386/2016 @ SLP (Crl.) No.6066/2012, Criminal Appeal No.387/2016 @ SLP (Crl.) No.6068/2012, Criminal Appeal No.388/2016 @ SLP (Crl.) No.6081/2012, Criminal Appeal No.389/2016 @ SLP (Crl.) No.6083/2012, Criminal Appeal No.390/2016 @ SLP (Crl.) No.9925/2012 and Criminal Appeal No.391/2016 @ SLP (Crl.) No. 4702/2012]

J U D G M E N T

ARUN MISHRA, J.

1. Leave granted in all the special leave petitions.

2. In the appeals the question involved is whether in view of the provisions contained in section 6 of Punjab Disturbed Areas Act, 1983 (as amended in 1989) (for short "the 1983 Act") the prosecution or other legal proceedings relating to Police officers can be instituted without prior sanction of the Central Government.

3. The case set up by the appellants in Criminal Appeal No.190 of 2003 is that they are the officers of the Punjab Police. At the relevant time they were entrusted with the duties and responsibilities of public order and peace in the State of Punjab. It is averred by the appellants that, in the early 1980s, there was a sudden spurt in the terrorist activities, massive killings at the hands of terrorists, looting, extortions, kidnapping, resulting into total collapse of the civil administration. More than 25,000 civilians, 1800 men in uniform and their relatives had been killed at the hands of the terrorists resulting into migration of civil population in the border districts of Amritsar, Ferozpur and Gurdaspur. District Amritsar was bifurcated into three police districts for the purpose of better administration, namely Amritsar, Taran Taran and Majitha. The present cases arise from police district Taran Taran which is the closest police district to Pakistan.

It is further averred that on 22.7.1993 four persons were killed in an encounter with the police. The prosecution alleged that they were killed in a fake encounter. On the basis of the complaint lodged by Chaman Lal, father of one of the deceased, the CBI obtained sanction from the State Government to prosecute the accused as at the relevant time, under section 6 of the 1983 Act, sanction from Central Government was required. However, on the basis of sanction obtained from the State Government, the CBI filed chargesheet against the accused persons in the Court of Special Judge, Patiala. The appellants filed application under section 227 of the Cr.P.C. for discharge on the ground that they had acted in the incident in the course of their duty and sanction granted by the State Government was without jurisdiction, illegal and void.

4. The CBI contested the application on the ground that sections 4 and 5 of the 1983 Act were not applicable and there was no need for obtaining any sanction because the deceased had been killed in a fake encounter. The Special Court dismissed the application filed by the accused persons. Aggrieved thereby, they approached the High Court by filing a criminal revision and the same has also been dismissed. The High Court has held that as per prosecution case it is a case of fake encounter, as such sanction is not required. The same could not be said to be an act in discharge of official duties. Aggrieved thereby the appellants are before this Court. The facts are more or less similar in all the cases.

5. Writ Petition (Crl.) No.139/2012 has been filed by Chaman Lal with a prayer that Union of India may be directed to grant sanction under section 197 Cr.P.C. for prosecution of police officer as set out in the affidavit of CBI filed in Appeal No.190/2003.

6. This Court vide order dated 20.7.2001 stayed the further proceedings before the trial court in SLP (Crl.) No.2336/2001 - Balbir Singh & Ors. v. State of Punjab. Similar orders of interim stay were passed in other cases also. One such order was passed on 21.1.2002 in SLP (Crl.) Nos.3072-75/2001

and these matters had been tagged. On behalf of the accused appellants, order dated 16.2.2006 has been referred to in which it has been observed that the CBI had stated during the course of the arguments that the mater be sent to the Central Government with the entire record to consider the question of sanction in terms of section 6 of the 1983 Act. This Court in view of the stand taken by the CBI continued the interim stay on operation of the impugned orders and observed that the Central Government will consider the matter in terms of section 6 and in accordance with law without being prejudiced by any observation made in any of the impugned orders. Cases were ordered to be listed after three months. This Court was informed by the Additional Solicitor General on 10.10.2006 that the Central Government has opined that the case of Balbir Singh was not a fit case for giving sanction for prosecution in terms of section 6 of the 1983 Act. So far as Harpal Singh is concerned, the Central Government was not the competent authority and with respect to another accused Bhupinderjit Singh, CBI has not submitted full report. Thereafter interim order was passed on 13.2.2007 by this Court to consider grant of sanction in the case of Gurmeet Singh. On 22.9.2010 this Court noted in the interim order that Balbir Singh in Crl. Appeal No.190/2003 had died and this Court dismissed the appeal as abated against him. Appeal with respect to other appellants was adjourned. Interim stay was granted in other connected matters on 30.7.2012 with respect to cases pending in the trial court at Patiala.

7. It was submitted by learned counsel appearing on behalf of accused appellant that sanction to prosecute was necessary in view of the provisions contained in section 6 of the 1983 Act as amended in 1989. Thus the prosecution could not have been launched without obtaining sanction of the Central Government. This Court by interim order had directed on submission being raised by CBI that the matter will be referred to the Central Government for sanction and in certain cases Central Government had granted sanction and in others it had declined. Sanction to prosecute was necessary as the act was done in discharge of official duties. As a matter of fact, false allegations of fake encounter have been made in the cases. The deceased indulged in various criminal activities. They were creating unrest and the officers have discharged their duties at the time of the incident. Thus without prior sanction to prosecute by the Central Government, they could not have been prosecuted. The prosecution deserves to be quashed.

Per contra, it was submitted on behalf of the CBI and the learned counsel appearing on behalf of the complainant that in such cases of criminal activities, fake encounters, custodial death due to torture etc., sanction to prosecute is not at all required as fake encounters, torture in custody and other criminal acts complained of do not form part of their official duties. Thus, the High Court has rightly upheld the order of the trial court, in such cases the sanction to prosecute is not necessary in such cases.

8. The matters in question as per prosecution case pertain to death caused in fake encounter, or by torture or death in police custody.

9. It was submitted by learned counsel on behalf of the appellants that in the course of proceedings the CBI has taken a stand that it would refer the cases for sanction to the Central Government. This Court is bound by such stand of the CBI on the basis of which interim order was passed and the petition may be disposed of in terms of the interim order that the Central Government may decide

the question of sanction. We are not at all impressed by the submission made by learned counsel appearing on behalf of the appellants. In the interim order this Court has never decided the legality or the correctness of the impugned orders passed by the High Court. In the course of proceedings interim order was passed on the basis of particular submission made by counsel for the CBI but this Court has never decided the question whether sanction at this stage is necessary or not. Hence the interim orders are of no avail to the cause espoused by the appellants.

10. On merits, accused-appellants have relied upon the decision of the Federal Court in Dr. Hori Ram Singh v. Emperor [AIR 1939 FC 43] in which Federal Court has laid down that the question of good faith or bad faith is expected to be decided by the court after trial. The question of good faith or bad faith should not be introduced at the stage of section 270(1) with regard to the meaning of the words "purporting to be done in official duty", the court observed that it is difficult to say that it necessarily implies "purporting to be done in good faith". In the case of embezzlement, an officer is not doing an act in execution of his duty. It would amount to criminal breach of trust under section 409 IPC but in case of provision under section 477-A IPC if an act is done willfully, with intention to defraud, falsify any book or account, in such cases for prosecution under section 409, consent of Governor is not necessary but for prosecution under section 477A, consent is necessary.

11. Reliance has also been placed on the decision of this Court in Shreekantiah Ramayya Munipalli v. The State of Bombay [1955 (1) SCR 1177] wherein this Court had observed thus :

> "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'.
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> 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.
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> The act of abetment alleged against him stands on the same footing, for his part in the abetment was to permit the disposal of the goods by the doing of an official act and thus "willfully suffer" another person to use them dishonestly: section 405 of the Indian Penal Code. In both cases, the "offence" in his case would be incomplete without proving the official act.
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> We therefore hold that section 197 of the Code of Criminal Procedure applies and that sanction was necessary, and as there was none the trial is vitiated from the start. We therefore quash the proceedings against the second accused as also his conviction and sentence."

12. This Court has observed in Shreekantiah Ramayya (supra) that cases have to be decided on their own facts.

13. Reliance has also been placed on a decision of this Court in Matajog Dobey v. H.C. Bhari [1955 (2) SCR 925] in which a complaint was filed under sections 323, 341, 342, and 109, Cr.P.C. Summons were issued to accused persons under section 323. An objection was taken by accused Bhari as to want of sanction under section 197 Cr.P.C. It was upheld and all the accused were discharged. The High Court affirmed the order of the Presidency Magistrate. This Court held that where in pursuance of a search warrant issued under section 6 of the Taxation on Income (Investigation Commission) Act, 1947, they were required to open the entrance door and on being challenged by the Darwan they tied him with a rope, causing him injuries and alleged to have assaulted the proprietor mercilessly with the help of two policemen. In the facts of the case it was held by this Court that sanction was necessary as the assault and the use of criminal force related to the performance of the official duties of the accused within the meaning of section 197 Cr.P.C. In the matter of grant of sanction under section 197 Cr.P.C., the offence alleged to have been committed by the accused must have something to do with the accused, with the discharge of official duty. In other words, there must be a reasonable connection between the act and the discharge of official duty. That must have a relation to the duty that the accused could lay a reasonable claim, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. The question of sanction may arise at any stage of prosecution, the Constitution Bench also held that the facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not, may have to be determined from stage to stage. This Court has held thus :

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

14. In Bhappa Singh v. Ram Pal Singh & Ors. 1981 (Supp) SCC 12 there was firing by the Customs party as they were resisted in carrying out a raid peacefully and an injury was sustained by the Customs party. This Court considered grant of protection under section 108 of the Gold (Control) Act, 1968 providing immunity to an officer for official act done in good faith under the Act. This Court has discussed the matter thus :

> "6. In view of the circumstances mentioned in the last paragraph, there is little room for doubt that the Customs party was not out to commit dacoity either in the jewellery shop or the chaubara, that they also committed no trespass into either of those places, but that the purpose of the raid was to find out if any illegal activity was being carried on therein. The presence of two licensed Gold-smiths in the chaubara speaks volumes in that behalf. It may further be taken for granted that the Customs party was manhandled before they themselves resorted to violence, because there was no reason for them to open fire unless they were resisted in the carrying out of the raid peacefully.
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> 7. Even though what we have just stated is a general prima facie impression that we have formed at this stage on the materials available to us at present, it may not be possible to come to a conclusive finding about the falsity or otherwise of the complaint. But then we think that it would amount to giving a go-by to Section 108 of

the Gold (Control) Act, if cases of this type are allowed to be pursued to their logical conclusion, i.e., to that of conviction or acquittal. In this view of the matter we do not feel inclined to upset the impugned order, even though perhaps the matter may have required further evidence before quashing of the complaint could be held to be fully justified. The appeal is accordingly dismissed."

15. In State of Maharashtra v. Dr. Budhikota Subbarao 1993 (3) SCC 339, this Court considered grant of sanction under section 197 on complaint of espionage. It was held that it was during the discharge of official duty the act was done, also considering the provisions contained in the Official Secrets Act, 1923 and the Atomic Energy Act, 1962, sanction for prosecution under section 197 Cr.P.C. was necessary. The meaning of the 'official act' has been considered by this Court and held thus :

"6. Such being the nature of the provision the question is how should the expression, 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', be understood? What does it mean? 'Official' according to dictionary, means pertaining to an office. And official act or official duty means an act or duty done by an officer in his official capacity. In S.B. Saha v. M.S. Kochar (1979) 4 SCC 177 it was held: (SCC pp. 184-85, para 17) "The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision." Use of the expression, 'official duty' implies 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. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. In P. Arulswami v. State of Madras (1967) 1 SCR 201 this Court after reviewing the authorities right from the days of Federal Court and Privy Council held:

"... It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the

office, then sanction would be necessary. 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. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable." It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in Matajog Dubey v. H.C. Bhari AIR 1956 SC 44 thus:

"[T]he offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty ... 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 (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty." (emphasis supplied) If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed."

16. In Mansukhlal Vithaldas Chauhan v. State of Gujarat 1997 (7) SCC 622, a question came up for grant of sanction under section 6 of the Prevention of Corruption Act, 1988 in which this Court had observed that the State Government or any other authority has a right to consider the facts of each case and to decide whether a public servant can be prosecuted or not. Thus there is a discretion to

grant or not to grant the sanction. This Court has held thus :

> "14. From a perusal of Section 6, it would appear that the Central or the State Government or any other authority (depending upon the category of the public servant) has the right to consider the facts of each case and to decide whether that "public servant" is to be prosecuted or not. Since the section clearly prohibits the courts from taking cognizance of the offences specified therein, it envisages that the Central or the State Government or the "other authority" has not only the right to consider the question of grant of sanction, it has also the discretion to grant or not to grant sanction."

17. In Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan & Ors. [1998 (1) SCC 205] this Court has laid down that the accused is not debarred from producing the relevant documentary materials which can be legally looked into without any formal proof to support the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty thereby requiring sanction of the appropriate authority. This Court held that at a preliminary stage such questions are not required to be considered because accused has not yet led evidence in support of their case on merits. This Court has held thus :

> "23. Mr Sibal's contention is based upon the observations made by this Court in Mathew case (1992) 1 SCC 217 wherein this Court had observed that even after issuance of process under Section 204 of the Code if the accused appears before the Magistrate and establishes that the allegations in the complaint petition do not make out any offence for which process has been issued then the Magistrate will be fully within his powers to drop the proceeding or rescind the process and it is in that connection the Court had observed "if the complaint on the very face of it does not disclose any offence against the accused". The aforesaid observation made in the context of a case made out by the accused either for recall of process already issued or for quashing of the proceedings may not apply fully to a case where the sanction under Section 197(1) of the CrPC is pleaded as a bar for taking cognizance. The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance, the accused after appearing before the court on process being issued, by an application indicating that Section 197(1) is attracted merely assists the court to rectify its error where jurisdiction has been exercised which it does not possess. In such a case there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible, for adjudication of the question as to whether in fact Section 197 has any application in the case in hand. It is no longer in dispute and has

been indicated by this Court in several cases that the question of sanction can be considered at any stage of the proceedings.

24. In Matajog case AIR 1956 SC 44 the Constitution Bench held that the complaint may not disclose all the facts to decide the question of applicability of Section 197, but facts subsequently coming either on police or judicial inquiry or even in the course of prosecution evidence may establish the necessity for sanction. In B. Saha case (1979) 4 SCC 177 the Court observed that instead of confining itself to the allegations in the complaint the Magistrate can take into account all the materials on the record at the time when the question is raised and falls for consideration.

In Pukhraj case (1973) 2 SCC 701 this Court observed that whether sanction is necessary or not may depend from stage to stage. In Matajog case (supra) the Constitution Bench had further observed that the necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place the material on record during the course of trial for showing what his duty was and also the acts complained of were so interrelated with his official duty so as to attract the protection afforded by Section 197 of the Code of Criminal Procedure. This being the position it would be unreasonable to hold that the accused even though might have really acted in discharge of his official duty for which the complaints have been lodged yet he will have to wait till the stage under sub-section (4) Section 246 of the Code is reached or at least till he will be able to bring in relevant materials while cross-examining the prosecution witnesses. On the other hand it would be logical to hold that the matter being one dealing with the jurisdiction of the court to take cognizance, the accused would be entitled to produce the relevant and material documents which can be admitted into evidence without formal proof, for the limited consideration of the court whether the necessary ingredients to attract Section 197 of the Code have been established or not. The question of applicability of Section 197 of the Code and the consequential ouster of jurisdiction of the court to take cognizance without a valid sanction is genetically different from the plea of the accused that the averments in the complaint do not make out an offence and as such the order of cognizance and/or the criminal proceedings be quashed. In the aforesaid premises we are of the considered opinion that an accused is not debarred from producing the relevant documentary materials which can be legally looked into without any formal proof, in support of the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty thereby requiring sanction of the appropriate authority.

25. Considering the facts and circumstances of the case, it prima facie appears to us that the alleged acts on the part of the respondents were purported to be in the exercise of official duties. Therefore, a case of sanction under Section 197 Criminal Procedure Code has been prima facie made out. Whether it was unjustified on the part of the respondents to take recourse to the actions alleged in the complaint or the respondents were guilty of excesses committed by them will be gone into in the trial after the required sanction is obtained on the basis of evidences adduced by the parties. At this stage, such questions are not required to be considered because the accused have not yet led evidence in support of their case on merits."

18. In Gauri Shankar Prasad v. State of Bihar & Anr. 2000 (5) SCC 15 this Court has laid down the test to determine whether the alleged action which constituted an offence has a reasonable and rational nexus with the official duties required to be discharged by the public servant. The appellant in his official capacity as Sub-Divisional Magistrate had gone to the place of the complainant for the purpose of removal of encroachment. It was when entering the chamber of the complainant, he used filthy language and dragged him out of his chamber. It was held that the act has a reasonable nexus with the official duty of the appellant. Hence no criminal proceedings could be initiated without obtaining sanction. It was observed thus :

> "8. What offences can be held to have been committed by a public servant while acting or purporting to act in the discharge of his official duties is a vexed question which has often troubled various courts including this Court. Broadly speaking, it has been indicated in various decisions of this Court that the alleged action constituting the offence said to have been committed by the public servant must have a reasonable and rational nexus with the official duties required to be discharged by such public servant.
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> 14. Coming to the facts of the case in hand, it is manifest that the appellant was present at the place of occurrence in his official capacity as Sub-Divisional Magistrate for the purpose of removal of encroachment from government land and in exercise of such duty, he is alleged to have committed the acts which form the gravamen of the allegations contained in the complaint lodged by the respondent. In such circumstances, it cannot but be held that the acts complained of by the respondent against the appellant have a reasonable nexus with the official duty of the appellant.

It follows, therefore, that the appellant is entitled to the immunity from criminal proceedings without sanction provided under Section 197 CrPC. Therefore, the High Court erred in holding that Section 197 CrPC is not applicable in the case."

19. It has been laid down in Gauri Shankar Prasad (supra) that in case offence has been committed while discharging his duties by an accused and there is a reasonable nexus with official duties, if answer is in the affirmative then sanction is required. However it would depend upon the facts and circumstances of each case whether there is a reasonable nexus with official duties to be discharged.

20. In Abdul Wahab Ansari v. State of Bihar & Anr. 2000 (8) SCC 500 firing was made by police inspector while removing encroachments due to which one person was killed and two were injured. A private complaint was filed under sections 302, 307 etc. on which Magistrate issued summons to the police inspector. A challenge was made to the cognizance taken by the Magistrate by filing a petition under section 482 before the High Court. The High Court held that the question of sanction can be raised at the time of framing of the charge and decision in Birendra K. Singh v. State of Bihar 2000 (8) SCC 498 has been held not to be a good law. This Court has observed that the question of sanction under section 497 Cr.P.C. has to be considered at the earlier stage of the proceedings.

Ultimately on facts it was held that the police inspector was entitled to protection and without sanction he could not have been prosecuted. Thus the criminal proceedings instituted without sanction were quashed.

21. In P.K. Pradhan v. State of Sikkim represented by the Central Bureau of Investigation 2001 (6) SCC 704 this Court considered the provisions contained in section 197(1) of the Code of Criminal Procedure whether an offence committed "while acting or purporting to act in the discharge of his official duty" and laid down that the test to determine the aforesaid is that the act complained of must be an offence and must be done in discharge of official duty. In any view of the matter there must be a reasonable connection between the act and the official duty. It does not matter that the act exceeds what is strictly necessary for the discharge of the official duty, since that question would arise only later when the trial proceeds. However no sanction is required where there is no such connection and the official status furnishes only the occasion or opportunity for the acts. The claim of the accused that the act was done reasonably and not in pretended course of his official duty can be examined during the trial by giving an opportunity to the defence to prove it. In such cases the question of sanction should be left open to be decided after conclusion of the trial. The decision in Abdul Wahab Ansari (supra) has also been taken into consideration by this Court. In P.K. Pradhan (supra) this Court has laid down thus :

> "5. The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation.

x x x x x

15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.

16. In the present case, the accused is claiming that in awarding contract in his capacity as Secretary, Department of Rural Development, Government of Sikkim, he did not abuse his position as a public servant and works were awarded in favour of the contractor at a rate permissible under law and not low rates. These facts are required to be established which can be done at the trial. Therefore, it is not possible to grant any relief to the appellant at this stage. However, we may observe that during the course of trial, the court below shall examine this question afresh and deal with the same in the main judgment in the light of the law laid down in this case without being prejudiced by any observation in the impugned orders."

22. In State of H.P. v. M.P. Gupta 2004 (2) SCC 349 this Court has considered the provisions contained under section 197 and has observed that the same are required to be construed strictly while determining its applicability to any act or omission during the course of his service. Once any act or omission is found to have been committed by a public servant in discharge of his duty, this Court held that liberal and wide construction is to be given to the provisions so far as its official nature is concerned. This Court has held thus :

> "11. Such being the nature of the provision, the question is how should the expression, "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", be understood? What does it mean? "Official" according to the dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity."

23. In State of Orissa & Ors. v. Ganesh Chandra Jew 2004 (8) SCC 40 this Court has held that protection under section 197 is available only when the 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. The test to determine a reasonable connection between the act complained of and the official duty is that even in case the public servant has exceeded in his duty, if there exists a reasonable connection it will not deprive him of the protection. This Court has also observed that there cannot be a universal rule to determine whether there is a reasonable connection between the act done and the official duty nor is it possible to lay down any such rule. It was held thus :

> "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. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case." However, it has also been observed that public servant is not entitled to indulge in criminal activities. To that extent the

section has been construed narrowly and in a restricted manner.

24. In K. Kalimuthu v. State by DSP 2005 (4) SCC 512 this Court has observed that official duty implies that an act or omission must have been done by the public servant within the scope and range of his official duty for protection. It does not extend to criminal activities but where there is a reasonable connection in the act or omission during official duty, it must be held to be official. This Court has also observed that the question whether the sanction is necessary or not, may have to be determined from stage to stage. This Court has laid down thus :

> "12. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.
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> x x x x x
>
> 15. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. Further, in cases where offences under the Act are concerned, the effect of Section 197, dealing with the question of prejudice has also to be noted."

25. In State of Karnataka through CBI v. C. Nagarajaswamy 2005 (8) SCC 370 this Court has considered the question of grant of sanction and it was held that grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. Whether proper sanction is accorded or not, ordinarily it should be dealt with at the stage of taking cognizance but if the cognizance of the offence is taken erroneously and the same comes to the notice of the court at a later stage, a finding to that effect is permissible and such a plea can be taken for the first time before an appellate court. In case sanction is held to be illegal then the trial would be held to have been rendered illegal and without jurisdiction, and there can be initiation of fresh trial after the accused was discharged due to invalid sanction for prosecution and a fresh trial was expedited.

26. In Sankaran Moitra v. Sadhna Das & Anr. 2006 (4) SCC 584 it was considered that sanction under section 197 Cr.P.C. is a condition precedent though the question as to applicability of section 197 may arise not necessarily at the inception but even at a subsequent stage. Request to postpone the decision on the said question in the instant case, it was held, in the facts of the case was not accepted. The complaint disclosed that the deceased was a supporter of a political party beaten to death by the police at the instance of appellant police officer near a polling booth on an election day. On the facts it was held that the appellant committed the act in question during the course of performance of his duty and sanction under section 197(1) was necessary for his prosecution. This Court has observed thus :

> "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 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."

27. In Harpal Singh v. State of Punjab 2007 (13) SCC 387 this Court has laid down that cognizance could not have been taken without sanction by the TADA Court. The conviction recorded on the basis of prosecution without sanction was set aside.

28. Learned counsel for appellants has also relied upon the decision of this Court in General Officer Commanding, Rashtriya Rifles v. Central Bureau of Investigation & Anr. 2012 (6) SCC 228 in which this Court has observed that it is for the competent authority to decide the question of sanction whether it is necessary or not and not by the court as sanction has to be issued only on the basis of sound objective assessment and not otherwise. Prior sanction is a condition precedent. This Court has laid down thus :

> "82. Thus, in view of the above, the law on the issue of sanction can be summarised to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him. However, there must be a discernible connection between the act complained of and the powers and duties of the public servant. The act complained of may fall within the description of the action purported to have been done in performing the official duty. Therefore, if the alleged act or omission of the public servant can be shown to have a reasonable connection, interrelationship or is inseparably connected

with discharge of his duty, he becomes entitled for protection of sanction.

> 83. If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab initio for want of sanction. Sanction can be obtained even during the course of trial depending upon the facts of an individual case and particularly at what stage of proceedings, requirement of sanction has surfaced. The question as to whether the act complained of, is done in performance of duty or in purported performance of duty, is to be determined by the competent authority and not by the court. The legislature has conferred "absolute power" on the statutory authority to accord sanction or withhold the same and the court has no role in this subject. In such a situation the court would not proceed without sanction of the competent statutory authority."

29. This Court in D.T. Virupakshappa v. C. Subash 2015 (12) SCC 231 has observed that whether sanction is necessary or not, may arise at any stage of the proceedings and in a given case it may arise at the stage of inception. This Court has referred to the decision of this Court in Om Prakash v. State of Jharkhand 2012 (12) SCC 72 and observed thus :

> "5. The question, whether sanction is necessary or not, may arise on any stage of the proceedings, and in a given case, it may arise at the stage of inception as held by this Court in Om Prakash v. State of Jharkhand (2012) 12 SCC 72. To quote: (SCC p. 94, para 41) "41. The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception.

There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the Code. It is not possible for us to hold that in such a case, the court cannot look into any documents produced by the accused or the public servant concerned at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea.""

30. In Manorama Tiwari & Ors. v. Surendra Nath Rai 2016 (1) SCC 594 in a case of death by alleged negligence of Government doctors, it was held that the sanction for prosecution was necessary. On facts it was held that the appellants were discharging public duties as they were performing surgery in the Government hospital. Hence criminal prosecution was not maintainable without sanction from the State Government.

31. In Shambhoo Nath Misra v. State of U.P. & Ors. 1997 (5) SCC 326 this Court considered the question when the public servant is alleged to have committed the offence of fabrication of false record or misappropriation of public funds etc. Can he be said to have acted in discharge of official

duties ? Since it was not the duty of the public servant to fabricate the false records, it was held that the official capacity only enabled him to fabricate the records and misapporopriate the public funds hence it was not connected with the course of same transaction. This Court has also observed that performance of official duty under the colour of public authority cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime. The court during trial or inquiry has to apply its mind and record a finding on the issue that crime and official duty are integrally connected or not. This Court has held thus :

> "4. .... The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralises the honest officer. The requirement of the sanction by competent authority or appropriate Government is an assurance and protection to the honest officer who does his official duty to further public interest. However, performance of official duty under colour of public authority cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime. The Court to proceed further in the trial or the enquiry, as the case may be, applies its mind and records a finding that the crime and the official duty are not integrally connected.
>
> 5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained."

32. In S.K. Zutshi & Anr. v. Bimal Debnath & Anr. 2004 (8) SCC 31 this Court has emphasized that official duty must have been official in nature. Official duty implies that the act or omission must have been official in nature. If the act is committed in the course of service but not in discharge of his duty and without any justification then the bar under section 197 Cr.P.C. is not attracted. This Court has laid down thus :

> "9. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is, under the colour of office. Official duty, therefore, implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which, further, must have been official in nature. The section has, thus, to be construed strictly while determining its applicability to any act or omission in the course of service. Its operation has to be

> limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far as its official nature is concerned. For instance, a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance, a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in the course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted."

33. In P.P. Unnikrishnan & Anr. v. Puttiyottil Alikutty & Anr. 2000 (8) SCC 131, law to the same effect as in the above decision has been reiterated. The police officers kept a person in lock-up for more than 24 hours without authority and subjected him to third degree treatment. Thus it was held that such offence was neither covered under section 64(3) of the Kerala Police Act nor under section 197(1) Cr.P.C.

34. In Satyavir Singh Rathi, Assistant Commissioner of Police & Ors. v. State through Central Bureau of Investigation 2011 (6) SCC 1, this Court has referred to the decision in B.Saha's case and laid down that the question of sanction has to be seen with respect to the stage and material brought on record up to that stage. Whether allegation of misappropriation is true or false is not to be gone into at this stage in considering the question whether sanction for prosecution was or was not necessary. The criminal acts attributed to the accused were taken as alleged. This Court has observed as under :

> "87. Both these judgments were followed in Atma Ram case AIR 1966 SC 1786 where the question was as to whether the action of a police officer in beating and confining a person suspected of having stolen goods in his possession could be said to be under colour of duty. It was held as under:
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> (AIR pp. 1787-88, para 3) "3. ... The provisions of Sections 161 and 163 of the Criminal Procedure Code emphasise the fact that a police officer is prohibited from beating or confining persons with a view to induce them to make statements. In view of the statutory prohibition it cannot, possibly, be said that the acts complained of, in this case, are acts done by the respondents under the colour of their duty or authority. In our opinion, there is no connection, in this case between the acts complained of and the office of the respondents and the duties and obligations imposed on them by law. On the other hand, the alleged acts fall completely outside the scope of the duties of the respondents and they are not entitled, therefore, to the mantle of protection conferred by Section 161(1) of the Bombay Police Act."

> 88. Similar views have been expressed in Bhanuprasad Hariprasad Dave case AIR 1968 SC 1323 wherein the allegations against the police officer were of taking advantage of his position and attempting to coerce a person to give him bribe. The plea of colour of duty was negatived by this Court and it was observed as under: (AIR p. 1328, para 9) "9. ... All that can be said in the present case is that the first appellant, a police officer, taking advantage of his position as a police officer and availing himself of the opportunity afforded by the letter Madhukanta handed over to him, coerced Ramanlal to pay illegal gratification to him.

This cannot be said to have been done under colour of duty. The charge against the second appellant is that he aided the first appellant in his illegal activity." x x x x x

94. In B. Saha case (1979) 4 SCC 177 this Court was dealing primarily with the question as to whether sanction under Section 197 CrPC was required where a Customs Officer had misappropriated the goods that he had seized and put them to his own use. While dealing with this submission, it was also observed as under: (SCC p. 184, para 14) "14. Thus, the material brought on the record up to the stage when the question of want of sanction was raised by the appellants, contained a clear allegation against the appellants about the commission of an offence under Section 409 of the Penal Code. To elaborate, it was substantially alleged that the appellants had seized the goods and were holding them in trust in the discharge of their official duty, for being dealt with or disposed of in accordance with law, but in dishonest breach of that trust, they criminally misappropriated or converted those goods. Whether this allegation or charge is true or false, is not to be gone into at this stage. In considering the question whether sanction for prosecution was or was not necessary, these criminal acts attributed to the accused are to be taken as alleged." (emphasis supplied)"

35. This Court has held that in case there is an act of beating a person suspected of a crime of confining him or sending him away in an injured condition, it cannot be said that police at that time were engaged in investigation and the acts were done or intended to be done under the provisions of law. Act of beating and confining a person illegally is outside the purview of the duties.

36. In Paramjit Kaur (Mrs) v. State of Punjab & Ors. (1996) 7 SCC 20, this Court directed the Director, CBI to appoint an investigation team headed by a responsible officer to conduct investigation in the kidnapping and whereabouts of the human rights activist and also to appoint a high- powered team to investigate into the alleged human rights violations.

37. The principles emerging from the aforesaid decisions are summarized hereunder :

> I. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.
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> II. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official

nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner. III. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under section 197 Cr.P.C. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.

IV. In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.

V. In case sanction is necessary it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority. VI. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.

VII. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

VIII. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty was. Accused has the right to lead evidence in support of his case on merits.

IX. In some case it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.

38. In the instant cases, the allegation as per the prosecution case it was a case of fake encounter or death caused by torture whereas the defence of the accused person is that it was a case in discharge of official duty and as the deceased was involved in the terrorist activities and while maintaining law and order the incident has taken place. The incident was in the course of discharge of official duty. Considering the aforesaid principles in case the version of the prosecution is found to be correct there is no requirement of any sanction. However it would be open to the accused persons to adduce the evidence in defence and to submit such other materials on record indicating that the incident

has taken place in discharge of their official duties and the orders passed earlier would not come in the way of the trial court to decide the question afresh in the light of the aforesaid principles from stage to stage or even at the time of conclusion of the trial at the time of judgment. As at this stage it cannot be said which version is correct. The trial court has prima facie to proceed on the basis of prosecution version and can re-decide the question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to the notice of the court that there was a reasonable nexus of the incident with discharge of official duty, the court shall re-examine the question of sanction and take decision in accordance with law. The trial to proceed on the aforesaid basis. Accordingly, we dispose of the appeals/writ petition in the light of the aforesaid directions.

.....J.
(V. Gopala Gowda)

New Delhi; .....J.
April 25, 2016. (Arun Mishra)
ITEM NO.1A-For Judgment COURT NO.9 SECTION IIB/X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 190/2003

DEVINDER SINGH & ORS. Appellant(s)

VERSUS

STATE OF PUNJAB THROUGH CBI Respondent(s)

WITH

Crl.A.No.352/2016 @ SLP(Crl.) No.3324/2016 @ SLP(Crl.)...CRLMP No. 10040/2004
Crl.A.No.353/2016 @ SLP(Crl) No. 3352/2006 Crl.A.No.354/2016 @ SLP(Crl) No. 4729/2012
Crl.A.No.355/2016 @ SLP(Crl) No. 4739/2012 Crl.A.No.356/2016 @ SLP(Crl) No. 4743/2012
Crl.A.No.357/2016 @SLP(Crl) No. 4759/2012 Crl.A.No.358/2016 @ SLP(Crl) No. 5369/2012
Crl.A.No.360/2016 @ SLP(Crl) No. 5419/2012 Crl.A.No.361/2016 @ SLP(Crl) No. 5435/2012
Crl.A.No.362/2016 @ SLP(Crl) No. 5522/2012 Crl.A.No.363/2016 @ SLP(Crl) No. 5547/2012
Crl.A.No.364/2016 @ SLP(Crl) No. 5578/2012 Crl.A.No.365/2016 @ SLP(Crl) No. 5590/2012
Crl.A.No.366/2016 @ SLP(Crl) No. 5592/2012 Crl.A.No.367/2016 @ SLP(Crl) No. 5614/2012
Crl.A.No.368/2016 @ SLP(Crl) No. 5617/2012 Crl.A.No.369/2016 @ SLP(Crl) No. 5619/2012
Crl.A.No.371/2016 @ SLP(Crl) No. 5622/2012 Crl.A.No.373/2016 @ SLP(Crl) No. 5668/2012
Crl.A.No.374/2016 @ SLP(Crl) No. 5669/2012 Crl.A.No.375/2016 @ SLP(Crl) No. 5697/2012
Crl.A.No.377/2016 @ SLP(Crl) No. 5706/2012 Crl.A.No.378/2016 @ SLP(Crl) No. 5712/2012
Crl.A.No.379/2016 @ SLP(Crl) No. 5714/2012 Crl.A.No.380/2016 @ SLP(Crl) No. 5716/2012
Crl.A.No.381/2016 @ SLP(Crl) No. 5812/2012 Crl.A.No.382/2016 @ SLP(Crl) No. 6005/2012
Crl.A.No.383/2016 @ SLP(Crl) No. 6006/2012 Crl.A.No.384/2016 @ SLP(Crl) No. 6014/2012
Crl.A.No.385/2016 @ SLP(Crl) No. 6057/2012 Crl.A.No.386/2016 @ SLP(Crl) No. 6066/2012

Crl.A.No.387/2016 @ SLP(Crl) No. 6068/2012 Crl.A.No.388/2016 @ SLP(Crl) No. 6081/2012 Crl.A.No.389/2016 @ SLP(Crl) No. 6083/2012 Crl.A.No.390/2016 @ SLP(Crl) No. 9925/2012 Crl.A.No.391/2016 @ SLP(Crl) No. 4702/2012 Date : 25/04/2016 These appeals and the writ petition were called on for pronouncement of JUDGMENT today.

For Appellant(s) Mr. Sudhir Walia, Adv.
Ms. Niharika Ahluwalia, Adv.
Mr. Abhishek Atrey,Adv.

Mr. K. K. Mohan,Adv.

Ms. Jyoti Mendiratta,Adv.

Ms. Kamini Jaiswal,Adv.

For Respondent(s) Mr. P. Parmeswaran,Adv.

Mr. Bharat Sangal,Adv.

Ms. Sushma Suri,Adv.

Mr. Irshad Ahmad,Adv.

Mr. Kuldip Singh,Adv.

Ms. Puja Sharma,Adv.

Mr. B. V. Balaram Das,Adv.

Mr. Arvind Kumar Sharma,Adv.

Hon'ble Mr. Justice Arun Mishra pronounced the judgment of the Bench comprising Hon'ble Mr. Justice V.Gopala Gowda and His Lordship.

Delay, if any, is condoned.

Leave granted in the all the special leave petitions. The appeals and the writ petition are disposed of in terms of the signed Reportable Judgment.

|(VINOD KUMAR JHA) | |(MALA KUMARI SHARMA) |
|COURT MASTER | |COURT MASTER |

(Signed Reportable Judgment is placed on the file)