P K Pradhan vs The State Of Sikkim Represented By The on 24 July, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2547, 2001 (6) SCC 704, 2001 AIR SCW 2648, 2001 (7) SRJ 272, 2001 (3) LRI 801, 2001 CALCRILR 545, 2001 (4) SCALE 508, 2001 SCC(CRI) 1234, (2001) 5 JT 610 (SC), (2001) 21 OCR 640, (2001) 2 ALLCRIR 1602, (2001) 2 CHANDCRIC 260, (2001) SC CR R 892, (2001) 3 BLJ 661, (2002) 1 MADLW(CRI) 227, (2002) 1 RAJ LW 27, (2001) 3 RECCRIR 835, (2001) 4 SCJ 362, (2001) 3 CURCRIR 95, (2001) 5 SUPREME 289, (2001) 4 SCALE 508, (2001) 2 UC 303, (2001) 43 ALLCRIC 516, (2001) 3 CALLT 68, (2001) 3 CRIMES 323, 2001 (2) ANDHLT(CRI) 175 SC, (2001) 2 ANDHLT(CRI) 175

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Bench: S.N. Phukan, B.N. Agrawal

CASE NO.:
Appeal (crl.) 1118 of 2000

PETITIONER:
P K PRADHAN

Vs.

RESPONDENT:
THE STATE OF SIKKIM REPRESENTED BY THE

DATE OF JUDGMENT: 24/07/2001

BENCH:
G.B. PATTANAIK, S.N. PHUKAN & B.N. AGRAWAL

JUDGMENT:

B.N.AGRAWAL, J.

In this appeal by Special Leave, order passed by Sikkim High Court, in Criminal Revision Application dismissing the same after holding that no sanction under Section 197 of the Code of Criminal Procedure, 1974 (hereinafter referred to as the Code) is required for prosecution of the

appellant and thereby upholding order passed by the Special Judge refusing to drop the prosecution in the absence of sanction under Section 197 of the Code, has been impugned.

A First Information Report was lodged for prosecution of Shri Nar Bahadur Bhandari, the then Chief Minister of Sikkim, and the appellant who was the then Secretary of Rural Development Department, Government of Sikkim, besides certain contractors under Sections 120-B of the Indian Penal Code read with Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the 1947 Act) which correspond to Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 1988 Act) and the prosecution case, in short, was that during the year 1983-84, the State Cabinet of Sikkim decided to implement 36 Rural Water Supply Schemes in the State of Sikkim under minimum needs programme for a total cost of Rs. 1,62,31,630/- and while approving the above proposal the Cabinet specifically decided that the works worth more than Rs. 1,00,000/- shall be put to open tender while works below Rs. 1,00,000/- shall be executed through Panchayat nominees. The approval of the State Cabinet was communicated to the Rural Development Department for necessary follow up action for implementation of these schemes. In order to implement 19 of the schemes, the Department issued tender notice on 19-12-1983 inviting sealed tenders from enlisted contractors having resources and experience in such government works. In response to this notice various tenders were received by the Department and the same were opened on 18th January, 1984 by a tender committee. Necessary action for acceptance/rejection of tender then followed in respective files. It was alleged that when the matter was thus being processed, Shri Nar Bahadur Bhandari, the then Chief Minister of Sikkim, Shri P.K.Pradhan, the then Secretary, Rural Development Department, Government of Sikkim who is the appellant in this appeal along with fifteen contractors, named in the First Information Report, entered into a criminal conspiracy with the object of securing contract works in favour of the said contractors by corrupt or illegal means or by otherwise abusing the position of the then Chief Minister and the appellant as public servant and got the works awarded in favour of contractors aforesaid at low rates thereby causing pecuniary advantage and corresponding loss to the State of Sikkim, by various commissions and omissions.

After registering the case, the matter was duly investigated and charge sheet was submitted against the appellant and the aforesaid accused who was the then Chief Minister of Sikkim under Section 5(2) read with Section 5(1)(d) of the 1947 Act corresponding to Section 13(2) read with Section 13(1)(d) of the 1988 Act. Charge sheet was also submitted against the aforesaid two official accused persons besides fifteen contractors referred to above for their prosecution under Section 120-B of the Indian Penal Code read with Section 5(2) read with Section 5(1)(d) of the 1947 Act corresponding to Section 13(2) read with Section 13(1)(d) of the 1988 Act. It may be stated that before cognizance was taken upon the charge sheet, the then Chief Minister Shri Nar Bahadur Bhandari ceased to continue as such and the appellant ceased to be public servant. By order dated 14th September, 1994, the Special Judge took cognizance and summoned all of the aforesaid accused persons including the appellant. On behalf of the appellant, who was Secretary, Department of Rural Development, Government of Sikkim at the time of commission of the alleged offence, a preliminary objection was raised before the Special Judge to the effect that his prosecution under Section 120-B of the Indian Penal Code read with Sections 5(2) and 5(1)(d) of the 1947 Act was not warranted as he being a public servant at the relevant time, sanction was required under Section 197

of the Code and the same having not been obtained, the prosecution for these offences was not fit to continue. Similar objection was taken on behalf of another accused-Shri Nar Bahadur Bhandari, the then Chief Minister of Sikkim. The Special Judge by order dated 17th November, 1998 rejected the preliminary objection and held that no sanction was required. Challenging the aforesaid order, the appellant and the aforesaid Shri Nar Bahadur Bhandari moved Sikkim High Court by filing separate revision applications which having been dismissed by the impugned order holding that no sanction under Section 197 of the Code was required, the present appeal by Special Leave.

Shri L.Nageswara Rao, learned Senior Counsel appearing on behalf of the appellant, submitted that act of the appellant complained of had reasonable connection with the discharge of official duty and both were so inter-woven that one could not be separated from the other, as such for prosecuting the appellant, sanction was required under Section 197 of the Code and the High Court was not justified in holding otherwise. Learned Counsel, however, did not challenge continuance of the prosecution of the appellant under Section 5(2) read with Section 5(1)(d) of the 1947 Act which corresponds to Section 13(2) read with Section 13(1)(d) of the 1988 Act as no sanction for prosecution under Section 6 of the 1947 Act and Section 19 of the 1988 Act was required in view of the fact that before the date of taking cognizance, the appellant ceased to be public servant inasmuch as under the aforesaid sections, sanction is required only if, on the date of cognizance, accused was continuing to be public servant and not otherwise. On the other hand, Shri P.P.Malhotra, learned Senior Counsel appearing on behalf of the Central Bureau of Investigation and Shri A.Mariarputham, learned counsel appearing on behalf of the State of Sikkim, submitted that acts of the accused complained of, had absolutely no connection with the discharge of official duty inasmuch as commission of offence of conspiracy can never be treated to be in discharge of official duty, therefore, no sanction for prosecution under Section 197 of the Code was at all required. In view of the rival contentions, the only question that arises is as to whether sanction for prosecution of the appellant was required under Section 197 of the Code for offences punishable under Section 120-B of the Indian Penal Code and with Sections 5(2) and 5(1)(d) of 1947 Act. .

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 inter-related 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 situation.

In the case of Hori Ram Singh v. The Crown, 1939 Federal Court Reports 159, question was considered as to whether the protection under Section 197 of the Code can be confined only to such acts of the public servant which are directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. In that case, while laying down the law, Sulaiman, J., observed thus at page 178:-

> The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty.
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> It was further observed thus at page 179:-
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> Of course, if the case as put forward fails or the defence establishes that the act purported to be done in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground.
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> The view taken by Sulaiman, J. has been approved by the Privy Council in H.H.B.Gill and another v. The King, AIR 1948 Privy Council 128, where the Court laid down the law at page 133 which runs thus:- A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the Judgment which he delivers may be such an act : nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.
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> [Emphasis added] In the case of Shreekantiah Ramayya Munipalli v. The State of Bombay, 1955(1) SCR 1177, the view taken by the Privy Council in the case of Hori Ram Singh (supra) had been approved and this Court observed that Section 197 of the Code should not be construed in such a narrow way so that the same can never be applied. In the said case, Vivian Bose, J. speaking for the Court laid down thus at page 1186 :- 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 officials 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.
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> [Emphasis added] In the case of Amrik Singh v. The State of Pepsu, 1955(1) SCR 1302, upon a detailed discussion, this Court was of the view that if the discharge of

official duty and the act of the accused complained of are inseparable, sanction under Section 197 of the Code would be necessary. Venkatarama Ayyar, J., speaking for the Court observed at page 1307-08 which runs thus:-

If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.

[Emphasis added] In the case of Matajog Dobey v. H.C.Bhari, 1955(2) SCR 925, a cONSTITUTION bENCH OF THIS cOURT CLEARLY LAID DOWN THat where a power is conferred or a duty is imposed by a statute or otherwise and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution because it is a rule that when the law commands a thing to be done, it authorises the performance of whatever may be necessary for executing its command. The Court was considering in the said case the allegation that the official authorised in pursuance of a warrant issued by the Income Tax Investigation Commission in connection with certain pending proceedings before it, forcibly broke open the entrance door and when some resistance was put, the said officer not only entered forcibly but tied the person offering resistance with a rope and assaulted him causing injuries and for such an act, a complaint had been filed against the public officers concerned. This Court, however, held in that case that such a complaint cannot be entertained without sanction of the competent authority as provided under Section 197 of the Code. The Court had observed that before arriving at a conclusion whether the provisions of Section 197 of the Code will apply, the court must conclude that there is a reasonable connection between the act complained of and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.

In the case of Baijnath Gupta and others v. The State of Madhya Pradesh, 1966(1) SCR 210, it has been observed that in relation to charge under Sections 477-A/109 of the Indian Penal Code, sanction is necessary under Section 197 of the Code as the same was committed within the scope of official duties though may be in dereliction of them.

In Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan and others, (1998) 1 SCC 205, relying upon Matajog Dobey case (supra) and bearing in mind the legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with previous sanction of the Government concerned, this Court has laid down that the said provision is a prohibition imposed

by the statute from taking cognizance and, as such, exercising jurisdiction of the court in the matter of taking cognizance and, therefore, a court will not be justified in taking cognizance of the offence without such sanction on a finding that the acts complained of are in excess of the discharge of the official duty of the government servant concerned.

In the case of Abdul Wahab Ansari v. State of Bihar and another, (2000) 8 SCC 500, while considering the scope of Section 197 of the Code, this Court observed at page 507 which runs thus:-

We have no hesitation to come to the conclusion that the appellant had been directed by the Sub-Divisional Magistrate to be present with police force and remove the encroachment in question and in course of discharge of his duty to control the mob, when he had directed for opening of fire, it must be held that the order of opening of fire was in exercise of the power conferred upon him and the duty imposed upon him under the orders of the Magistrate and in that view of the matter the provisions of Section 197(1) applies to the facts of the present case.

In the case of K.Satwant Singh v. The State of Punjab, 1960(2) SCR 89, a Constitution Bench of this Court observed that some offences cannot by their vary nature be regarded as having been committed by public servant while acting or purporting to act in the discharge of their official duty. For instance, acceptance of bribe, an offence punishable under Section 161 of the Indian Penal Code is one of them and offence of cheating and abetment thereof is another. Likewise, another Constitution Bench in the case of Om Prakash Gupta v. State of U.P., 1957 SCR 423, observed that a public servant committing criminal breach of trust does not normally act in his public capacity as such no sanction is required for such an act.

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 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.

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 law laid down in this case without being prejudiced by any observation in the impugned orders.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

J. [G.B.PATTANAIK] J. [S.N.PHUKAN] J. [B.N.AGRAWAL] NEW DELHI, JULY 24, 2001.