Sankaran Moitra vs Smt. Sadhna Das & Anr on 24 March, 2006

Author: C.K. Thakker

Bench: C.K. Thakker

```
           CASE NO.:
Appeal (crl.)  330 of 2006

PETITIONER:
SANKARAN MOITRA

RESPONDENT:
SMT. SADHNA DAS & ANR.

DATE OF JUDGMENT: 24/03/2006

BENCH:
C.K. THAKKER

JUDGMENT:
```

J U D G M E N T ARISING OUT OF SPECIAL LEAVE PETITION (CRIMINAL) No. 3347 of 2003 C.K. THAKKER, J.

Leave granted.

I have had the benefit of going through the judgment prepared by my learned brother P.K. Balasubramanyan, J. I express my inability to agree with the reasons recorded and conclusions arrived at by him. I, therefore, consider it appropriate to deal with the matter independently. The relevant facts as stated in the judgment of the High Court of Calcutta impugned in the present appeal are that on May 10, 2001 general election of the State Assembly of the West Bengal was held. One Rabindra Nath Das @ Topi Das ('deceased' for short), husband of Mrs. Sadhna Das ('complainant' for short) was supporting a particular political party. He was engaged in distributing food packets to the polling agents at Subhas Sarobar (Baliaghata Lake) constituency. It was the case of the complainant that when her husband left the home on May 10, 2001, he stated that he would be coming for taking lunch. According to the complainant, however, her husband did not come. When she was returning after casting her vote, she saw a Tata Sumo vehicle and one Anath Das of the locality inside the vehicle. When she asked the people who gathered over there as to what had happened, she was informed that Topi Das had become unconscious due to beating by police on his head and he was taken to hospital. The complainant, therefore, immediately proceeded to hospital. She found her younger brother-in-law Laxman Das amongst the crowd. On being asked, she was told that her husband had died. She learnt that her husband was supplying food packets at the polling booth. At that time, some police officers came there and they beat her husband. When her husband left the place, police men chased him towards the lake side. Her husband was not knowing swimming and he stated to the police personnel that he did not know swimming and requested

them not to beat him. But the police officers did not pay any heed to the request and continued beating. The husband of the complainant fell down, became unconscious, was taken to the hospital but was declared dead there. She, therefore, informed the Deputy Commissioner of Police on May 11, 2001 that her husband was beaten to death by police and demanded "stern punishment" to persons responsible for killing him. On the next day, i.e. on May 12, 2001, the Deputy Commissioner of Police, registered Phoolbagan P.S. Case No.112, for an offence punishable under Section 304 Indian Penal Code (IPC) against unknown police officers. It appears that for a considerable long period, nothing was done in the matter and no action was taken on the basis of complaint made by the complainant. She, therefore, filed a private complaint in the Court of Chief Judicial Magistrate, Alipore, Kolkata on May 28, 2001 being case No.C-1107 of 2001 against the appellant and two other police officers for offences punishable under Sections 302, 201, 109 and 120B of IPC. It was stated in the said complaint that the husband of the complainant was assaulted and severely beaten by police personnel which resulted in his death and thereby the accused had committed the offences as mentioned in the complaint and prayed for taking cognizance, to issue process against the accused and to pass appropriate orders in accordance with law. She had also submitted a list of witnesses.

Between May 31, and June 16, 2001, the learned Magistrate, following the provisions of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') recorded statements of the complainant and the witnesses produced by her. On the basis of the said material, the learned Magistrate took cognizance of the offences. On June 16, 2001, the learned Magistrate issued non-bailable warrant against the accused persons including the appellant herein and fixed July 10, 2001 as returnable date. Meanwhile, on June 30, 2001, the accused preferred an application under Section 210 of the Code stating therein that a complaint was filed by the complainant on May 12, 2001 which had been registered as PS Case No.112 of 2001 for an offence punishable under Section 304 IPC by Phoolbagan Police Station and proceedings were initiated. It was also stated that thereafter Fax-message was sent to the Joint Commissioner of Police to investigate the case under Section 302 which was treated as FIR. It was, therefore, prayed that the complaint dated May 28, 2001 be stayed.

It may also be stated that the accused moved the High Court for grant of anticipatory bail under Section 438 of the Code. The application, however, was rejected by the High Court on June 20, 2003. The order passed by the High Court was challenged by filing Special Leave Petition in this Court which was also dismissed by this Court on July 28, 2003.

The accused then filed a petition under Section 482 of the Code for quashing of proceedings, inter alia, contending that the alleged offence had been committed by them "while acting or purporting to act" in the discharge of their official duties and no cognizance could be taken by the Court except with the previous sanction of the State Government. Since no such sanction was obtained before filing the complaint, the complaint was not maintainable at law and was liable to be dismissed only on that ground. The High Court, by the impugned order, dismissed the petition observing that it was a case of 'merciless beating' by police officer causing death of a person which could not be said to be an act in the discharge of official duty. Several injuries were found on the person of the deceased and according to the medical opinion, those injuries were ante mortem and homicidal in nature. The postmortem report clearly indicated the nature and extent of the injuries inflicted by the accused on

the victim and the witnesses had given vivid description of the offence committed by the accused. In the facts and circumstances, therefore, it could not be said to be a case covered by Section 197 of the Code and hence the application was liable to be dismissed. Accordingly, the application was dismissed on July 7, 2003. The said order is challenged by the appellant. On August 22, 2003, notice was issued and "stay of further proceedings pending before the Chief Judicial Magistrate, Alipore, Calcutta" was granted by this Court in the meanwhile. Affidavits and counter affidavits were thereafter filed.

We have heard learned counsel for the parties. Mr. K.T.S. Tulsi, Senior Advocate, appearing for the appellant, contended that the High Court has committed an error of law in holding that the provisions of Section 197 of the Code were not attracted. According to him, the appellant was a police officer and he was on duty on May 10, 2001. At about 2 p.m., a message was received from Assistant Commissioner of Police regarding disturbance and rioting between two rival political parties at Subhash Sarobar and the case was registered as Case No. 111 of 2001 for offences punishable under Sections 148, 149 and 336 IPC read with Sections 3 & 5 of Explosive Substances Act, 1908 against the deceased and others and investigation started. The appellant, along with other police officers, rushed to the spot in order to disperse the rioting mob and restore law and order situation. During the said incident of dispersing mob and preventing rioting, the deceased was injured and fell into water, drowned in the lake and declared dead on being taken to the hospital. According to Mr. Tulsi, all acts were committed by the appellant while exercising powers, discharging duties and performing functions as police officer and as such the provisions of Section 197 of the Code were clearly attracted. It was submitted by Mr. Tulsi that admittedly, no sanction was obtained from the Government before instituting proceedings against the appellant. The proceedings were, therefore, not tenable. The learned Magistrate, therefore, was wrong in taking cognizance, in issuing non-bailable warrant and proceeding with the case. Mr. Tulsi submitted that absence of sanction as required by Section 197 goes to the root of the matter and no proceedings could be initiated in absence of such sanction and the proceedings are required to be dropped. Mr. Tulsi also submitted that as is clear, the complainant had filed a complaint on May 11, 2001 and in the said complaint it was expressly stated that her husband had met with death due to beating by police officers. An entry was made to that effect and a case was registered as PS Case No.112 of 2001 for an offence punishable under Section 304 IPC by Phoolbagan Police Station on May 12, 2001. Subsequently, even Section 302 IPC was added. Considering that fact also, a private complaint instituted by the complainant in the Court of the Chief Judicial Magistrate on May 28, 2001 for offences punishable under Sections 302, 201, 109 and 120B IPC was required to be stayed under Section 210 of the Code which provides for procedure to be followed in such cases.

Mr. Pradip Kumar Ghosh, learned senior counsel for the complainant, on the other hand, supported the action taken by the Chief Judicial Magistrate and the order passed by the High Court. He submitted that the acts committed by the appellant and other police officers were totally illegal, unlawful and in violation of law of the land. The deceased was chased, assaulted, severely beaten and killed by the appellant and other police officials. Section 197 has no application in such cases. According to the learned counsel, the High Court has considered the entire material in its proper perspective and held that in the facts and circumstances of the case, Section 197 could not be invoked. The said order cannot be said to be illegal or contrary to law.

The counsel also submitted that no action whatsoever has been taken on the basis of the complaint filed by the complainant on May 11, 2001 and hence Section 210 was not attracted. The learned Magistrate, therefore, was wholly justified in entertaining the complaint filed by the complainant, in taking cognizance and issuing arrest warrants. The counsel also submitted that in view of the fact that the action of the appellant and police officers was totally illegal and an innocent person was killed that non bailable warrants were issued. The said action was challenged by the accused but the High Court as well as this Court did not interfere with the order and dismissed the application for anticipatory bail. The counsel also made grievance that the State and the police force of the respondent State were virtually supporting and illegally helping the appellant and other police officials which is clear from the fact that even though non bailable warrant was issued against the accused persons in June, 2001 and the said action was confirmed by the High Court and also by this Court as early as in 2003, till today, the appellant has not been arrested. He, therefore, submitted that no case has been made out for interference by this Court and the appeal deserves to be dismissed.

Mr. Avijit Bhattacharjee, learned counsel appearing for the State relied upon the affidavit filed on behalf of the State.

The questions which arise for our consideration are, firstly, whether in the facts and circumstances of the case, Section 197 of the Code is attracted and sanction as required by that section is sine qua non for prosecuting the appellant and other police officers and whether the Chief Judicial Magistrate was justified in taking cognizance of the complaint filed by the complainant and proceeding with the complaint, and secondly, whether the case is covered by Section 210 of the Code and the private complaint filed by the complainant in the Court of Chief Judicial Magistrate on May 28, 2001 against the accused persons for offences punishable under Sections 302, 201, 109 and 120B IPC could be proceeded with or required to be stayed? Before I deal with the material placed on record, it would be appropriate to consider the legal position. Section 197 of the Code provides for sanction of prosecution of certain public servants. The relevant part thereof reads thus:

> 197 Prosecution of Judges and Public Servants.
>
> (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction -
>
> (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
>
> (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

> (4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences or which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

It is the case of the appellant that whatever he has done has done "while acting or purporting to act in the discharge of his official duty" and Section 197 bars a Court from taking cognizance of such offence except with the previous sanction of the State Government. Since there is no sanction of the State Government, the Chief Judicial Magistrate could not have taken cognizance of the case and the complaint was liable to be dismissed. But the case of the complainant is that there was no need or necessity to take sanction of the State Government as the appellant and other police officers had deliberately, intentionally and willfully caused death of her husband. The said act was not done in discharge of duty or even under colour of duty but it has been done by them by taking undue advantage of their position. The case was of murder, pure and simple. The learned Magistrate took into account all relevant facts and material placed before him and held that the sanction was not necessary. The High Court was, therefore, justified in dismissing the application. So far as the provisions of the Section 197 are concerned, they came up for judicial interpretation in several cases. One of the leading cases which has been referred to in several decisions thereafter was of Dr. Hori Ram Singh v. Emperor, [1939 FCR 159 : AIR 1939 FC 43]. Their Lordships of the Federal Court in Dr. Hori Ram Singh were called upon to consider Section 270 of the Government of India Act, 1935 which was similar to Section 197 of the present Code. Sulaiman, J., interpreting the said section, observed that the question of good faith or bad faith would not strictly arise in interpreting the provision inasmuch as the words used in the section were not only "any act done in the execution of his duty" but also "any act purporting to be done in the execution of duty". It was, therefore, held that when the act is not done in the execution of the duty, but is purported to be done in the execution of the duty, it would be covered. The learned Judge stated; "Obviously the section does not mean that the very act which is the gravamen of the charge and constitutes the offence should be official duty of the servant of the Crown. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The words as used in the Section are not "in respect of any official duty" but "in respect of any act done or purporting to be done in the execution of his duty". The two expressions are obviously not identical. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in the execution of the duty. The reference is obviously to an offence committed in the course of an action, which is taken or purports to be taken in compliance with an official duty, and is in fact connected with it. The test appears to be not that the offence is capable of being committed only by a public servant and not by any one else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction. If the act complained of is an offence, it must necessarily be not an execution of duty, but a dereliction of it. What is necessary is that the offence must be in respect of an act done or purported to be done in execution of duty, that is, in the discharge of an official duty. It must purport to be done in the official capacity with which he

pretends to be clothed at the time, that is to say under the cloak of an ostensibly official act, though of course, the offence would really amount to a breach of duty. An act cannot purport to be done in execution of duty unless the offender professes to be acting in pursuance of his official duty and means to convey to the mind of another, the impression that he is so acting."

It was, however, stated "The section is not intended to apply to acts done purely in a private capacity by a public servant. It must have been ostensibly done by him in his official capacity in execution of his duty, which would not necessarily be the case merely because it was done at a time when he held such office, nor even necessarily because he was engaged in his official business at the time. For instance, if a public servant accepts as a reward a bribe in his office while actually engaged in some official work, he is not accepting it even in his official capacity, much less in the execution of any official duty, although it is quite certain that he could never have been able to take the bribe unless he were the official in charge of some official work. He does not even pretend to the person who offers the bribe that he is acting in the discharge of his official duty, but merely uses his official position to obtain the illegal gratification." (emphasis supplied) In the concurring opinion, Varadachariar, J. stated "It only remains to deal with the arguments urged on the one side or the other as to the test to be applied in determining whether or not the act complained of is one "purporting to be done in execution of his duty" as a public servant. I would observe at the outset that the question is substantially one of fact, to be determined with reference to the act complained of and the attendant circumstances; it seems neither useful nor desirable to paraphrase the language of the section in attempting to lay down hard and fast tests." (emphasis supplied) In H.H.B. Gill & another v. King, (75 IA 41:AIR 1948 PC 128), the Judicial Committee of the Privy Council had an occasion to deal with the provisions of Section 197 of the Code in juxtaposition of Section 270 of the Government of India Act, 1935. Referring to Dr. Hori Ram Singh and applying the ratio laid down therein, their Lordships observed that a public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. The Judicial Committee proceeded to state that in considering Section 197, 'much assistance' could be derived from the Judgment of Dr. Hori Ram Singh.

It then formulated the test 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." (emphasis supplied) Shreekantiah Ramayya Munipalli & another v. State of Bombay, [1955 (1) SCR 1177 : AIR 1955 SC 287] was probably the first leading decision of this Court on the point. Keeping in view the underlying object behind Section 197 and referring to Dr. Hori Ram Singh as also H.H.B. Gill, Vivian Bose, J. stated:

> "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 not 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. (emphasis supplied) Again, in Amrik Singh v. State of Pepsu, [1955 (1) SCR 1302 : AIR 1955 SC 309], this Court held that it is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code, nor every act done by him while he is actually engaged in the performance of his official duties, so that, if questioned, it could be claimed to have been done by virtue of the office. It is only when the act complained of is directly connected with his official duties that sanction is necessary. Speaking for the Court, Venkatarama Ayyar, J. referring to the relevant decisions on the point, formulated the principle:
>
> "The result of the authorities may thus be summed up : It is not every offence committed by a public servant that requires sanction for prosecution under section 197(1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution."

A reference may be made to a decision of the Constitution Bench in Matajog Dobey v. H.C. Bhari, [1955 (2) SCR 925 : AIR 1956 SC 44]. Holding Section 197 of the Code constitutional and not discriminatory and violative of Article 14 of the Constitution, the Court stated that the primary object of Section 197 was to protect public servants from harassment in the discharge of their official duties. Delivering the judgment for the Bench, Chandrasekhara Aiyar, J. said:

> "The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation." (emphasis supplied) The Bench also considered the question that if such sanction is necessary at any stage, it should be obtained at that stage. It was also indicated that such question may arise "at any stage of the proceeding". The

> complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of the official duty but the facts subsequently coming to light on a police report or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. The Court, therefore, concluded:
>
> "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."

In P. Arulswami v. State of Madras, [1967 (1) SCR 201 : AIR 1967 SC 776], their Lordships stated:- "It is the quality of the act that is important and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted". If the act is totally unconnected with the official duty, there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable. In Pukhraj v. State of Rajasthan & Another, [(1973) 2 SCC 701 : 1974 (1) SCR 551], after considering several cases on the point, the Court observed that though the principle is well settled, the real difficulty lies in applying it to the factual situation.

The Court observed "While the law is well settled the difficulty really arises in applying the law to the fact to any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. (emphasis supplied) In B. Saha & others v. M.S. Kochar, [(1979) 4 SCC 177], this Court stated that for the application of Section 197 of the Code, there must be direct and reasonable nexus between the offence committed and the discharge of official duty. It may happen that a particular act might have been committed by a public servant in the discharge of his duty or purported to be in discharge of his duty but he might have acted illegally and unlawfully if the other act complained of would be outside the ambit of Section 197 of the Code. In B. Saha, the Court observed that though the initial action of seizure of the goods by the public servant was an act committed by him while acting in discharge of his official duty, subsequent act of dishonest misappropriation or conversion of goods could not be said to be in discharge or purported discharge of duty. For that act, he cannot get protection of Section 197 of the Code. The Court also observed that the question of sanction under Section 197 of the Code can be raised and considered at any stage of the proceedings. Moreover, while considering the question whether or not sanction for prosecution was required, it is not necessary for the Court to confine itself to the allegation in the complaint alone and it can take into account all the material on record at that time when the question is raised and falls for consideration. In Bakhshish Singh Brar v. Gurmej Kaur & Another, [(1987) 4 SCC 663], this Court held that when police officers were accused of causing grievous injuries and death while conducting raid and search, it could not be said that they were acting in

purported discharge of their official duty but if while discharging duty, they exceeded the limits of such official capacity, sanction under Section 197 of the Code would be necessary. While insisting on the need and necessity to protect public servants, the Court also emphasized the protection of rights of citizens. The Court stated "It is necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, that is the rationale behind Section 196 and Section 197 of the CrPC. But it is equally important to emphasise that rights of the citizens should be protected and no excesses should be permitted.

> "Encounter death" has become too common. In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that Section 196 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damaged to the evidence."

In P.K. Pradhan v. State of Sikkim, [(2001) 6 SCC 704], after referring to relevant case law on the point, it was observed that different tests have been laid down to ascertain the scope and meaning of the relevant words occurring in Section 197 "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". It was then stated that the offence alleged to have been committed must have something to do, or must relate in some manner, with the discharge of official duty of a public servant. No question of sanction would 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 that question would arise only at a later stage when the trial proceeds on the merits. What a court must consider 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. If the answer to the said question is in affirmative, Section 197 will be attracted, but not otherwise. This Court reiterated that the question as to applicability of Section 197 of the Code can be raised at any stage of the proceedings. In order to come to the conclusion, whether the claim of the accused that the act he had committed was in the course of 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 and the question of sanction would be left to be decided in the main judgment which may be delivered upon at the conclusion of the trial. In State of Orissa v. Ganesh Chandra Jew, [(2004) 8 SCC 40], it was held that the expression "any offence alleged to have been committed by public servant while acting or purporting to act in the discharge of his official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should fall within the scope and range of his official duty. It was then observed that the test is whether omission or neglect to do that act would be brought on a public servant, the

charge of dereliction of his official duty. The protection is available only when the alleged act done by the public servant is reasonable, connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act [vide S.K. Zutshi v. Bimal Debnath (2004) 8 SCC 31].

In K. Kalimuthu v. State by DSP [(2005) 4 SCC 512], it was stated that the protection given under Section 197 of the Code 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. But the said 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.

It was, therefore, observed "Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. (emphasis supplied) Recently, in Rakesh Kumar Mishra v. State of Bihar & Others, [(2006) 1 SCC 557], this Court restated the object behind enacting Section 197 of the Code and also prerequisites for application thereof. The Court stated "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 it chooses 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 from 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." (Emphasis supplied) From the aforesaid decisions, in my opinion, the law appears to be well settled. The primary object of the Legislature behind Section 197 of the Code is to protect public officers who have acted in discharge of their duties or purported to act in discharge of such duties. But, it is equally well settled that the act said to have been committed by public officer must have reasonable connection with the duty sought to be discharged by such public officer. If the act complained of has no nexus, reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an offence, he cannot get shelter under Section 197 of the Code. In other words, protection afforded by the said section is qualified and conditional.

Mr. Tulsi, no doubt, submitted that the appellant was a police officer. He was on duty. He had received a message about rioting and law and order situation at Baliaghata. He, therefore, had gone to the spot pursuant to the said message, in police uniform, in police jeep to deal with the situation. All the ingredients of Section 197 of the Code were thus satisfied and the High Court was wrong in not applying the said provision. I am unable to agree with Mr. Tulsi. In my judgment, it is precisely in such cases that the Court is called upon to consider whether the public servant was acting or purporting to act in discharge of his duty or it was merely a cloak for doing illegal act under the excuse of his status as a public servant and by taking undue advantage of his position, he was committing an offence or an unlawful act. In such situations, when the question comes up for consideration before a Court of law as to the applicability or otherwise of Section 197 of the Code, it is not only the power but the duty of the Court to apply its mind to the fact-situation before it. It should ensure that on the one hand, the public servant is protected if the case is covered by Section 197 of the Code and on the other hand, appropriate action would be allowed to be taken if the provision is not attracted and under the guise of his position as public servant, he is trying to take undue advantage.

In the instant case, from the material which has been placed on record, it is amply clear that the appellant and other police officers had acted illegally, unlawfully and highhandedly. In the complaint, it was stated by the widow of deceased Topi Das that the accused chased her husband

and assaulted him by causing several injuries which resulted in his death. But, apart from what is stated in the complaint, the learned Chief Judicial Magistrate had recorded statements of witnesses mentioned in the complaint. The learned counsel for the first respondent- complainant, drew our attention to those statements who were eye-witnesses. It was stated by them that the deceased had not indulged in any illegal activity. He had not done any unlawful act. He had no weapon with him. He was distributing food packets at the polling booth of a particular political party. He was assaulted and beaten by accused persons who were police officers. When the deceased left the place, the police officers chased him and continued to beat him. When deceased reached near a lake, he requested the police officers not to beat him. He also stated that he did not know how to swim and prayed to leave him. But the police officers did not pay any heed to his request and continued beating, which resulted in his death.

Dr. Rabindra Basu, who performed post mortem examination, stated that he found the following injuries on the person of Topi Das:

> "1. One abrasion with a reddish crust 1.4 inches x .3 inch more or less transversely placed across left side of forehead lower part being placed 1 inch above lateral 1/3rd left eye brow.
>
> 2. One abrasion .4 inch x .3 inch with reddish crust placed 1 inch above medical end of left eyebrow and = inch lateral to midline.
>
> 3. One linear abrasion .6 inch x .1 inch with reddish crust over lateral aspect of uppermost part of left forearm.
>
> 4. One abrasion = x .1 inch with reddish crust over postern lateral aspect of upper 1/3rd of left forearm.
>
> 5. One abrasion = x .1 inch over dorsum of left hand.
>
> 6. One linear abrasion .4 inch x .1 inch with reddish rust over dorsal aspect of web between index and middle finger."

On internal examination, he noticed the following injuries:

> 1. One heomotoma in the scalp tissue 3 = inches x 2 inches over right temporal region.
>
> 2. One heamotoma in the scalp tissue over vault of the skull 4 inch x .4 inch over parieto occipitial region, of scalp.
>
> 3. One heamotoma in the scalp tissue over vault of the skull 4 inch x 3 inches involving left parieto topper region.

> 4. One heamotoma 2 = inches x 1 = inch over left frontal region (forhead).
>
> 5. Exgradural Hemorrhage over vault of the brain involving posterior aspects of both partietal lobes.
>
> 6. Thin layscror sub-aural hemorrhage all over both the cerebral homlsphered inching under surfaced.

He then stated:

> "All the internal organs were congested. Laryenz and trachnoes was found congested and the lumen was filled up with shaving lathery froth with and sand seen even below bifunction of trachoea. Lungs were voluminous, doughy filled and on section and squeezing occupious amount of frothy blood mixed fluid come out. Heart showgrade-II atteroma at the root of aorta.
>
> On the basis of my findings I have the following opinion: "Death was due to the effects of head injuries associated with drawing ante-mortem and homicidal in nature.
>
> The injuries which I found are consisted with a trauma caused by blunt weapon such as Lathi."

(Emphasis supplied) The High Court, in my judgment, considered this aspect in its proper perspective and was wholly justified in observing that "it was a merciless beating by a police officer" causing death of a person which could not be said to be an act in discharge of official duty. The High Court was also right in stating that postmortem report clearly indicated the nature and extent of injuries on the victim. Other witnesses had given vivid description of the offence committed by the accused persons. The said finding, which is supported by material on record, cannot be said to be based on 'no evidence' or otherwise perverse, nor it can be concluded that an error of law has been committed by the High Court which requires to be corrected by this Court in the exercise of discretionary jurisdiction under Article 136 of the Constitution. Hence, in my opinion, no interference is called for against the said order.

In my view, even Section 210 of the Code has no application to the facts of the case on hand. Section 210 requires procedure to be followed when there is a complaint case and police investigation in respect of the same offence and reads thus:

> 210 Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.
>
> (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in

> relation to the offence which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.
>
> (2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence to taken by the Magistrate against any person who an accused in the complaint case, the Magistrate shall inquire together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.
>
> (3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him in accordance with the provision of this code.

Bare reading of the above provision makes it clear that during an inquiry or trial relating to a complaint case, if it is brought to the notice of the Magistrate that an investigation by the police is in progress in respect of the same offence, he shall stay the proceedings of the complaint case and call for the record of the police officer conducting the investigation.

The object of enacting Section 210 of the Code is three fold:

> (i) it is intended to ensure that private complaints do not interfere with the course of justice;
>
> (ii) it prevents harassment to the accused twice; and
>
> (iii) it obviates anomalies which might arise from taking cognizance of the same offence more than once.

The Joint Committee of Parliament observed:

> "It has been brought to the notice of the Committee that sometimes when serious case is under investigation by the police, some of the persons file complaint and quickly get an order of acquittal either by cancellation or otherwise. Thereupon the investigation of the case becomes infructuous leading to miscarriage of justice in some cases. To avoid this, the Committee has provided that where a complaint is filed and the Magistrate has information that the police is also investigating the same offence, the Magistrate shall stay the complaint case. If the police report (under Section 173) is received in the case, the Magistrate should try together the complaint case and the case arising out of the police report. But if no such case is received the Magistrate would be free to dispose of the complaint case. This new provision is intended to secure that private complainants do not interfere with the course of justice." (emphasis supplied) It is thus clear that before Section 210 can be invoked,

the following conditions must be satisfied.

(i) There must be a complaint pending for inquiry or trial;

(ii) Investigation by the police must be in progress in relation to the same offence;

(iii) A report must have been made by the police officer under Section 173; and

(iv) The magistrate must have taken cognizance of an offence against a person who is accused in the complaint case.

In the impugned order passed by the High Court, no such contention appears to have been raised by the appellant. On the basis of the complaint filed by the complainant and on being satisfied on the material placed on record, the learned Chief Judicial Magistrate, Alipore had proceeded with the case which cannot be said to be illegal. It may also be stated here that the High Court in its order, dated June 20, 2003 considered this contention and observed that Section 210 of the Code could not arrest the proceedings initiated by the complainant, since the 'basic tenor of the two cases were different.' Relying on the decision of this Court in Harjinder Singh v. State of Punjab, (AIR 1985 SC 404), it was submitted that both the cases could not be clubbed together since the prosecution version was quite different in those cases. It may be stated that Special Leave Petition against the order of the High Court was dismissed by this Court on July 28, 2003. Even this ground, therefore, cannot take the case of the appellant anywhere.

I am constrained to observe here that there is considerable force in the allegation of the learned counsel for the complainant that the State agency had shown partisan attitude and favoured the appellant. This is clear from the fact that though the application of the appellant for anticipatory bail was rejected by the High Court as well as by this Court before about three years, the appellant was never arrested by the police.

For the foregoing reasons, in my opinion, the order passed by the High Court is in consonance with well settled principles of law and does not deserve interference under Article 136 of the Constitution. The appeal, therefore, deserves to be dismissed and accordingly dismissed. Interim stay granted earlier stands vacated. It may be stated at this stage that the incident is of May, 2001 and about five years have passed. It is, therefore, necessary that the proceedings must be concluded as expeditiously as possible. The learned Chief Judicial Magistrate, Alipore is, therefore, directed to proceed with the case with utmost expedition as directed by the High Court.

Before parting with the matter, I may clarify that all the observations made by me hereinabove have been only for the limited purpose of deciding the controversy in connection with the applicability or otherwise of Sections 197 and 210 of the Code and I may not be understood to have expressed any opinion one way or the other on the merits of the case. As and when the matter comes before an appropriate Court, it may be decided strictly on its own merits without being influenced/inhibited by the above observations.

For the foregoing reasons, the appeal deserves to be dismissed and it is accordingly dismissed.