Romesh Lal Jain vs Naginder Singh Rana & Ors on 28 October, 2005

Equivalent citations: AIR 2006 SUPREME COURT 336, 2006 SCC(CRI) 593

Author: S.B. Sinha

Bench: S.B. Sinha, R.V. Raveendran

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           CASE NO.:
Appeal (crl.)  691 of 2003

PETITIONER:
Romesh Lal Jain

RESPONDENT:
Naginder Singh Rana & Ors.

DATE OF JUDGMENT: 28/10/2005

BENCH:
S.B. Sinha & R.V. Raveendran

JUDGMENT:
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JUDGMENT S.B. SINHA, J :

How far a sanction against a public servant for commission of an offence punishable under 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the 1988 Act') and Sections 409, 167, 218, 419, 420, 465, 468 and 471 of the Indian Penal Code is essential is in question in this appeal, which arises from a judgment and order dated 06.05.2002 passed by the High Court of Punjab and Haryana in Criminal Misc. No.39904-M of 2002 allowing an application filed by the First Respondent herein under Section 482 of the Code of Criminal Procedure (for short, Cr. P.C.). The First Respondent herein at the material time was a Sub Inspector posted in Police Station Kotwali in the District of Faridkot. He in his said capacity purported to have lodged a First Information Report against M/s Jain Gas Agency, a proprietary concern of the son of the Appellant, under Section 7 of the Essential Commodities Act, wherein it was alleged that on an inspection made in its office and godown several irregularities were found and furthermore some gas cylinders were said to have been sold in black market. The Appellant, who is also the District Convener, LPG Dealers Association, Faridkot, in a letter dated 31.08.1992 addressed to the Inspector General of Police, Internal Vigilance, Punjab, Chandigarh, alleged that the case registered was false, that while seizing 767 cylinders, the First Respondent had shown that only 743 cylinders were seized and thereby misappropriated 24 cylinders and that the First

> Respondent had demanded and taken a sum of Rs.20,000/- in cash from the Appellant by way of illegal gratification by putting pressure and the said amount was paid to him in order to avoid maltreatment at his hands. The payment so made was shown in the cash book and the ledger maintained by M/s Jain Gas Agency. The prosecution against the said M/s Jain Gas Agency under Section 7 of the Essential Commodities Act was found to be false and a final report under Section 173 Cr. P.C. was submitted for cancellation of the case which was accepted on 11.8.1993.

On the basis of the said allegations contained in Appellant's letter dated 31.8.1992, a First Information Report was lodged . However, upon investigation an untraced report was sent to the Court of Hardian Singh, Special Judge,Faridkot, who did not agree therewith and by an order dated 23.05.1998 opined that the statements of the witnesses recorded during investigation supported the case of the complainant and the matter required judicial verdict. The learned Special Judge, therefore, directed the Investigating Officer to obtain sanction for the prosecution against the Respondent herein and submit a final report. The said order dated 23.05.1998 came to be challenged by the First Respondent herein in a Criminal Revision which was marked as Criminal Revision No.1100 of 1998 before the Session Judge wherein it was observed that no cognizance could be taken by the Special Judge without obtaining proper sanction and it would be open to the Sanctioning Authority to consider the same. In the meanwhile, the Respondent was promoted as Inspector. The Deputy Inspector General of Police, Jallandhar Range, issued an order of sanction on or about 04.02.1999, which is in the following terms :

> "Therefore, now I Suresh Arora, IPS Deputy Inspector General of Police, Jalandhar Range, Jalandhar having powers to dismiss the SI (now Inspector) Naginder Singh Rana No.50/PR from service, grant sanction under section 197 of Cr.P.C. and under section 13(2) P.C. Act, 88 so that the competent court may take legal action against him for the above offence."

However the said order of sanction was withdrawn by the State in terms of an order dated 10.12.1999 as contained in a letter addressed to the Additional Director General of Police, Crime Punjab, Chandigarh, which is as under :

> "2. Under section 197 Cr. P.C. only Government is competent to accord prosecution sanction. Therefore, the prosecution accorded by the Deputy Inspector General of Police, Jalandhar Range, Jalandhar, issued vide his order dt. 4.2.99 is hereby cancelled.
>
> 3. On the careful perusal of the enquiry report of Special Investigation Cell of the Crime Branch and all other documents supplied by you, the Government does not find fit case to accord prosecution sanction in the present case."

The learned Special Judge by an order dated 18.04.2000 directed the Investigating Officer to submit a final report within one month, opining :

> "The perusal of the record reveals that accused Naginder Singh Rana was Sub Inspector in the police department when the offence was allegedly committed by him. The authority which was competent to grant sanction being punishing authority is Deputy Inspector General, Special Secretary, Department of Home, Punjab Chandigarh, was nothing to do with the sanction. As the Deputy Inspector General of Police, Jalandhar Range, Jalandhar, was the competent authority being punishing authority and has already granted sanction to prosecute the accused, it could not be cancelled in such a camouflage way. Apart from it, only sanction is required u/s 13 (2) of the P.C. Act, and not under section 197 Cr.P.C. Even otherwise, the sanction has already been obtained. Therefore, I do not agree at all with the Investigating Officer. There being statements of the witnesses supporting the case of the complainant and the sanction has already been granted by the competent authority, it is desirable that the judicial verdict should come. So after preparing the challan and completing all formalities, the Investigating Officer is directed to submit the final report in view of the above observations, preferably within one month."

The aforementioned order came to be questioned by the First Respondent herein by filing a Criminal Revision Application before the Punjab and Haryana High Court, which was marked as Criminal Revision No.575 of 2000 and by an order dated 23.07.2001, the said application was disposed of, stating :

> " Under these circumstances, the time bound directions of learned Special Judge deserve to be set aside. Therefore, the direction given in the impugned order is hereby quashed. The investigating agency shall be at liberty to continue the investigation and proceed in accordance with law."

Thereafter, a charge-sheet was filed and cognizance of the offence was taken. The First Respondent filed an application before the High Court purported to be under Section 482 of the Code of Criminal Procedure, 1973 (for short, Cr.P.C.), inter alia, praying for quashing of the First Information Report dated 06.05.1994 and the proceedings subsequent thereto including the report submitted under Section 173 Cr. P.C. which had been filed without obtaining sanction.

The High Court by reason of the impugned judgment, referring to the earlier proceedings culminating in order dated 23.07.2001 observed :

> "Three consequences flow from other order dated 23.07.2001 passed in Criminal Revision No.515 of 2000. Firstly, the time-bound directions given by the Special Judge, Faridkot, in order dated 18.04.2000 to the Investigating Officer to submit final report within a period of one month, were set aside; secondly, the impugned order had also the effect of setting aside the observations of the Special Judge to the effect that the Deputy Inspector General of Police is the authority competent to grant sanction, being the punishing Authority for prosecution of petitioner-accused and that the Department of Home, Punjab, Chandigarh, had nothing to do with the sanction for that reason, it could not be cancelled, and thirdly, the Investigating

> Agency was given liberty to continue with the investigation and proceed in accordance with law "

It was observed : (i) The said order dated 23.07.2001 attained finality and, thus, any contention contrary thereto or inconsistent therewith would amount to reviewing thereof which is impermissible in law; (ii) The State having refused to grant a sanction and as the accusations made against the Respondent related to discharge of his duties as Investigating Officer, sanction of prosecution was mandatory; (iii) The First Information Report cannot be quashed as it cannot be said that the allegations made therein do not disclose any offence against him. On the aforementioned grounds, the order of the learned Special Judge taking cognizance and summoning the Respondent without sanction of the competent authority for his prosecution was quashed.

The complainant is, thus, in appeal before us.

Mr. Neeraj Kumar Jain, the learned counsel appearing on behalf of the Appellant would submit : (i) The High Court committed a manifest error in passing the impugned judgment insofar as it failed and/or neglected to determine the question as to whether the act complained of had a reasonable nexus with the official duty of the Respondent; (ii) The High Court misread and misinterpreted its earlier order dated 23.07.2001; (iii) The order of sanction dated 04.02.1999 having been passed by a competent authority for prosecution of the Respondent for commission of offences punishable both under the 1988 Act as also various offences under the Indian Penal Code, the State could not have cancelled the same.

Mr. K.T.S. Tulsi, the learned Senior Counsel appearing on behalf of the Respondent would, on the other hand, submit that the purpose of enacting the provisions under Section 197 Cr. P.C. being to protect acts of the public servants in discharge of the public duty, the State was the only competent authority to grant or refuse sanction for their prosecution.

Drawing our attention to a notification dated 05.05.1983, which is annexed to the counter affidavit filed by the State, it was pointed out that by reason thereof, the requirement of obtaining sanction in terms of sub-section (3) of Section 197 Cr. P.C. had been extended to all the police officers charged with maintenance of public order. The allegations made against the Respondent by the Appellant herein being consisting of : (i) raiding of godown; (ii) seizure of 467 cylinders; (iii) lodging a First Information Report under the Essential Commodities Act; must be held to have been performed in the process of discharge of his official duty, and, thus, the alleged acts of misappropriation of 24 cylinders and acceptance of a bribe of Rs.20,000/- paid by the complainant for avoiding maltreatment, mandatorily require an order of sanction. Motive of an officer, it was contended, in this behalf, would be irrelevant. The learned counsel referring to the order of the learned Special Judge dated 23.05.1998 would also argue that an order of sanction which would mean a valid sanction was found to be required and in view of the fact that the order of sanction passed by the Deputy Inspector General of Police was set aside by the State and moreover it having refused to grant any sanction, no valid order of sanction exists. The Deputy Inspector General of Police, Mr. Tulsi would argue, evidently had no jurisdiction to grant sanction under Section 197 Cr. P.C., wherefor the State was the only competent authority and, thus, the said order was rightly cancelled

because the same was a composite one.

Sanction required under Section 197 Cr. P.C. and sanction required under the 1988 Act stand on different footings. Whereas sanction under the Indian Penal Code in terms of the Code of Criminal Procedure is required to be granted by the State; under the 1988 Act it can be granted also by the authorities specified in Section 19 thereof.

It is not in dispute that the Deputy Inspector General of Police was the competent authority for grant of sanction as against the Respondent herein in terms of the provisions of the 1988 Act. The State of Haryana, thus, could not have interfered with that part of the said order whereby requisite sanction had been granted under the 1988 Act. The contention of Mr. Tulsi to the effect that the order of sanction passed by the Deputy Inspector General of Police dated 04.02.1999 was a composite one and, thus, the State could cancel the same, does not appeal to us. Offences under the Penal Code and offences under the 1988 Act are different and distinct. On the face of the allegations made against the Respondent, they do not have any immediate or proximate connection. The test which is required to be applied in such a case is as to whether the offences for one reason or the other punishable under the Penal Code is also required to be proved in relation to offences punishable under the 1988 Act. If the answer to the said question is rendered in the negative, the same test can be applied in relation to a matter of sanction.

The High Court in its impugned order, however, does not appear to have taken that aspect of the matter into consideration. It failed to make a distinction between an order of sanction required for prosecuting a person for commission of an offence under the Penal Code and an order of sanction required for commission of an offence under the 1988 Act.

It is also beyond any cavil of doubt that an order granting or refusing sanction must be preceded by application of mind on the part of the appropriate authority. If the complainant or accused can demonstrate such an order granting or refusing sanction to be suffering from non-application of mind, the same may be called in question before a competent court of law. Evidently, the requirement of obtaining a sanction under Section 197 Cr. P.C. from the State in relation to the Respondent who at the material time was a Sub Inspector of Police might not have arisen if the notification issued by the State in this behalf on or about 05.05.1983 is read in proper context, which is as under :

> "No.3124-211 (1)-83/7773 In exercise of the powers conferred by sub-section (3) of Section 197 Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Governor of Punjab is pleased that the provisions of sub- section (2) of the said Section shall apply to serving police officials of all ranks of the Punjab Police force charged with the maintenance of Public Order."

The expression 'public order' has a distinct connotation. Investigation into the offence under the Essential Commodities Act may not be equated with the maintenance of public order as is commonly understood. The activities of a single individual giving rise to irregularities of maintenance of books of accounts as regard an essential commodity or resorting to the black

marketing, unless a volatile situation arises therefrom, cannot lead to disturbance of public peace, safety and tranquility, which are essential requisites of a 'public order'.

The said notification is, therefore, has no application in the facts and circumstances of the case and consequently it has to be held that no sanction by the State in terms of Section 197 Cr. P.C. was necessary as the Respondent could be removed from service by the Deputy Inspector General of Police and not by or with the sanction of the Government.

Furthermore the rival contentions of the parties are also required to be considered in the fact situation of the case. It is one thing to say that while discharging the official duties, the Government servant exceeds his right but it is another thing to say that the allegations made against a public servant has no reasonable nexus therewith.

In Shreekantiah Ramayya Munipalli vs. The State of Bombay [1955 (1) SCR 1177], whereupon Mr. Tulsi placed a strong reliance, it was held :

> "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".

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."

The factual matrix in that case was that three accused therein were Government servants, who were in charge of a depot containing stores worth several lacs of rupees. Some iron stores were said to have been handed over to the agent of the approver. The charge against them that they being in charge of those stores and to whom they had been entrusted in various capacities, entered into a conspiracy to defraud Government of the properties and pursuant thereto they arranged to sell them to the approver for a sum of Rs.4,000/- .

In P.K. Pradhan vs. State of Sikkim represented by the Central Bureau of Investigation [(2001) 6 SCC 704], a three-Judge Bench of this Court upon noticing Shreekantiah Ramayya Munipalli (supra) and Matajog Dobey (supra) laid down the law in the following terms :

> "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; maybe 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."

However, in State of U.P. vs. M.P. Gupta, [(2004) 2 SCC 349] upon, inter alia, noticing Shreekantiah Rammayya Munipalli (supra) and Amrik Singh vs. State of Pepsu [(1955) 1 SCR 1302], in a case where offences alleged against a public servant were under Sections 406, 409, 467, 468 and 471 IPC , this Court held :

> "21. That apart, the contention of the respondent that for offences under Sections 406 and 409 read with Section 120-B IPC sanction under Section 197 of the Code is a condition precedent for launching the prosecution is equally fallacious. This Court

> has stated the legal position in Shreekantiah Ramayya Munipalli case and also Amrik Singh case that it is not every offence committed by a public servant which requires sanction for prosecution under Section 197 of the Code, nor even every act done by him while he is actually engaged in the performance of his official duties. Following the above legal position it was held in Harihar Prasad v. State of Bihar as follows: (SCC p. 115, para 66) "As far as the offence of criminal conspiracy punishable under Section 120-B, read with Section 409 of the Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act are concerned, they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar."

22. Above views are reiterated in State of Kerala v. V. Padmanabhan Nair Both Amrik Singh and Shreekantiah were noted in that case. Sections 467, 468 and 471 IPC relate to forgery of valuable security, Will etc; forgery for the purpose of cheating and using as genuine a forged document respectively. It is no part of the duty of a public servant while discharging his official duties to commit forgery of the type covered by the aforesaid offences. Want of sanction under Section 197 of the Code is, therefore, no bar."

In N. Bhargavan Pillai (dead) by LRs. and Another vs. State of Kerala [AIR 2004 SC 2317], it was held "12. As noted in State of H.P. v. M.P. Gupta (JT 2003 (10) SC 32), sanction under Section 197 of the Code is not a condition precedent for an offence under Section 409 IPC."

A Bench of this Court, however, in State of Orissa through Kumar Raghvendra Singh and Others vs Ganesh Chandra Jew [(2004) 8 SCC 40], wherein an allegation was made against six officers of the Orissa Forest Department that they had falsely implicated the complainant for offences punishable under the Orissa Forest Act and the Wild Life (Protection) Act, 1972, and being not content with the said illegal acts, they seriously assaulted him and thereby committed offences punishable under Sections 341, 323, 325, 506 and 386 read with Section 34 IPC, was of the opinion :

> "Use of the expression "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 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.
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> 11. 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 the 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. 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 Dobey v. H.C. Bhari thus: (AIR 1956 SC 44, paras 17 & 19) "The 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."

The said decision was relied upon by another Bench in S.,K. Zutshi and Another vs Bimal Debnath and Another [(2004) 8 SCC 31], holding that when the complaint was that illegal gratification was demanded and accepted, the shop was ransacked and goods were taken away, no sanction would be required.

However, a somewhat different view was taken in K. Kalimuthu vs State by DSP [(2005) 4 SCC 512] wherein the allegation made against the Appellant was that he was guilty of various offences punishable under the Indian Penal Code as also under the 1988 Act. It was held :

> "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."

It was further observed :

> "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."

Matajog Dobey vs. H.C. Bhari [1955 (2) SCR 925] is a decision rendered by a Constitution Bench of this Court. In that case search of the premises was made by the officers of the Income Tax Department. They were authorized to make the search and they had with them a warrant issued by the Commissioner for the said purpose. Allegedly, they broke open the door, went inside, interfered with some books and drawers of tables, tied the complainant with a rope and assaulted, causing injuries. Chandrasekhara Aiyar J., speaking for the Constitution Bench was of the opinion :

> "The objection based on entry into the wrong premises is of no substance; it is quite probable that the warrant specified 17 instead of P-17 by a bona fide mistake or error; or it may be that the party made an honest mistake. As a matter of fact, the account books, etc. were found in P-17, the premises raided.
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> Slightly differing tests have been laid down in the decided cases to ascertain the scope and the 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". But the difference is only in language and not in substance. 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."

In B.S. Sambhau vs T.S. Krishnaswamy [(1983) 1 SCC 11], relying on Matajog Dobey (supra), this Court held that defamatory language used by a judge to an advocate does not attract the requirement of Section 197 Cr. P.C. In Om Prakash Gupta vs State of U.P.[1957 SCR 423], another Constitution Bench of this Court distinguished offences punishable under the 1988 Act and the Criminal Breach Trust, stating :

> " These two offences can co-exist and the one will not be considered as overlapping the other. A course of conduct can be proved when a person is arraigned under ss.5(1)(a) and 5(1)(b), but such a course is impossible to be let in evidence when an offence under ss. 161 and 162 is being enquired into or tried. Similarly there are a number of elements which can be proved in an inquiry or trial under s. 5(1)(c) that cannot be let in by the prosecution when a person is charged for an offence under s.

> 405 of the Indian Penal Code. In s. 405 of the Indian Penal Code the offender must willfully suffer another person to misappropriate the property entrusted, but in s. 5(1)(c) if he allows another person to dishonestly or fraudulently misappropriate or otherwise convert for his own use any property so entrusted, then it is an offence. There is a vast difference between willfully suffering another and allowing a person to do a particular thing and in our view the word "allows" is much wider in its import. Wilfully pre-supposes a conscious action, while even by negligence one can allow another to do a thing.
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> It seems to us, therefore, that the two offences are distinct and separate "

In Manohar Nath Kaul vs. State of Jammu & Kashmir [(1983) 3 SCC 429], this Court was of the opinion that cheating by drawing T.A. does not answer the test of connection between the act in the discharge of official duty and the performance of the official duty and, thus, sanction for prosecution under Section 420 I.P.C. was not required.

In B. Saha and Others vs. M.S. Kochar [(1979) 4 SCC 177] relied upon by Mr. Tulsi, the accused had tampered with, broke the seal of the consignment seized by them and removed some of the goods and, thus, abused their position, this Court applying the test laid down by the Federal Court in Dr. Hori Ram vs. Emperor [1939 FCR 159 : AIR 1939 FC 43] that the official capacity is material only in connection with the 'entrustment' and does not necessarily enter into the later act of misappropriation or conversion, which is the act complained of, opined :

> "This, however, should not be understood as an invariable proposition of law. The question, as already explained, depends on the facts of each case. Cases are conceivable where on their special facts it can be said that the act of criminal misappropriation or conversion complained of is inseparably intertwined with the performance of the official duty of the accused and therefore, sanction under Section 197(1) of the Code of Criminal Procedure for prosecution of the accused for an offence under Section 409, Indian Penal Code was necessary."

It was further held :

> "In the light of all that has been said above, we are of opinion that on the facts of the present case, sanction of the appropriate Government was not necessary for the prosecution of the appellants for an offence under Sections 409/120-B, Indian Penal Code, because the, alleged act of criminal misappropriation complained of was not committed by them while they were acting or purporting to act in the discharge of their official duty, the commission of the offence having no direct connection or inseparable link with their duties as public servants. At the most, the official status of the appellants furnished them with an opportunity or occasion to commit the alleged criminal act."

We may furthermore notice that in some cases, for example, State of Maharashtra vs. Atma Ram and Others [AIR 1966 SC 1786] Baijnath Gupta and Others vs. The State of Madhya Pradesh [1966 (1) SCR 210 and Harihar Prasad, etc. vs. State of Bihar [(1972) 3 SCC 89], having regard to the fact situation obtaining therein, this Court opined that the order of sanction for prosecution of the Government Servant was not necessary.

In Om Prakash Gupta (supra), the Constitution Bench observed "The last argument of Mr. Isaacs is that despite the fact tat the prosecution is under s.409 of the Indian Penal Code, still sanction to prosecute is necessary. Quite a large body of case law in all the High Courts has held that a public servant committing criminal breach of trust does not normally act in his capacity as a public servant, see

(a) The State v. Panduran Baburao (supra)

(b) Bhup Narain Saxena vs. State (supra)

(c) State vs. Gulab Singh, AIR (1954) Raj. 211.

We are in agreement with the view expressed by Hari Shankar and Randhir Singh JJ. that no sanction is necessary and the view expressed by Mull J. to the contrary is not correct.,"

> Abdul Wahab Ansari vs. State of Bihar and Another [(2000) 8 SCC 500] is another decision whereupon Mr. Tulsi relied upon, wherein in regard to a dispute between two sets of Mohammedan residents, allegation of encroachment of the property belonging to a mosque was made by one group against the other and while removing the encroachment several miscreants armed with weapons started hurling stones and as the situation became out of control, the appellant therein gave order for opening fire and on that basis said to have committed offences punishable under Section 302, 307, 380, 427, 504, 147, 148 and 149 of the Indian Penal Code; this Court framed the following question :
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> "Whether in the facts and circumstances of the present case, is it possible for the Court to come to a conclusion that the appellant was discharging his official duty and in course of such discharge of duty, ordered for opening of fire to control the mob in consequence of which a person died and two persons were injured and in which event, the provisions of Section 197 of the Code of Criminal Procedure can be held to be attracted?"

The said question was answered in the following terms :

> "Coming to the second question, it is now well settled by the Constitution Bench decision of this Court in Matajog Dobey v. H.C. Bhari that in the matter of grant of sanction under Section 197 of the Code of Criminal Procedure the 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. In other words, 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. In the said case it had been further held that where a power is conferred or a duty imposed by 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 said decision, therefore, has no application in the facts and circumstances of this case.

In Harihar Prasad (supra), it was held :

> "The real question therefore is whether the acts complained of in the present case were directly concerned with the official duties of the three public servants. As far as the offence of criminal conspiracy punishable under Section 120-B, read with Section 409 of the Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct "

The upshot of the aforementioned discussions is that whereas an order of sanction in terms of Section 197 Cr. P.C. is required to be obtained when the offence complained against the public servant is attributable to discharge of his public duty or has a direct nexus therewith, but the same would not be necessary when the offence complained has nothing to do with the same. A plea relating to want of sanction although desirably should be considered at an early stage of the proceedings, but the same would not mean that the accused cannot take the said plea or the court cannot consider the same at a later stage. Each case has to be considered on its own facts. Furthermore, there may be cases where the question as to whether the sanction was required to be obtained or not would not be possible to be determined unless some evidence is taken, and in such an event, the said question may have to be considered even after the witnesses are examined.

The raid and seizure in the office and godown of the Appellant were made on 18.03.1992. Seizure of gas cylinders and the lodgment of the First Information Report are no doubt acts of official capacity; but undoubtedly the prosecution was withdrawn on the ground that the same was false. It is in the aforementioned context also the question of criminal breach of trust and other allegations made as also demand and acceptance of a sum of Rs.20,000/- may have to be viewed.

The contention of Mr. Tulsi that the order dated 23.05.1998 attained finality and, thus, at a later stage a view could have been taken that obtaining of any sanction was not necessary, is fallacious. In

the said order dated 23.05.1998, the Special Judge did not say that the sanction would be necessary in terms of Section 197 Cr. P.C. In his order dated 23.05.1998 , the learned Judge clarified that obtaining of sanction was necessary from the Sanctioning Authority/Punishing Authority which would obviously refer to the necessity of an order of sanction under the 1988 Act. We, therefore, do not find any inherent contradiction in the said orders. The High Court was not also correct in coming to the conclusion that the earlier order of the High Court passed on 23.07.2001 resulted in three consequences. By reason of the said order, as noticed supra, only that portion of the order of the learned Special Judge whereby a direction was issued to complete the investigation within one month was quashed and not the entire order.

The other two consequences inferred by the High Court in the impugned order were, therefore, wholly unwarranted.

Furthermore, the statements purported to have been made on behalf of the prosecution that an order of sanction has to be obtained would not mean that the complainant has no locus to raise a question that in relation to the offences punishable under the Penal Code, no order of sanction was necessary to be obtained.

The question as to whether an order of sanction would be found essential would, thus, depend upon the facts and circumstances of each case. In a case where ex facie no order of sanction has been issued when it is admittedly a pre-requisite for taking cognizance of the offences or where such an order apparently has been passed by the authority not competent therefor, the court may take note thereof at the outset. But where the validity or otherwise of an order of sanction is required to be considered having regard to the facts and circumstances of the case and furthermore when a contention has to be gone into as to whether the act alleged against the accused has any direct nexus with the discharge of his official act, it may be permissible in a given situation for the court to examine the said question at a later stage.

We may hasten to add that we do not intend to lay down a law that only because a contention has been raised by the complainant or the prosecution that the question as regard necessity of obtaining an order of sanction is dependent upon the finding of fact that the nexus between the offences alleged and the official duty will have to be found out upon analyzing the evidences brought on records; the same cannot be done at an earlier stage. What we intend to say is that each case will have to be considered having regard to the fact situation obtaining therein and no hard and fast rule can be laid down therefor.

We have come across cases where the question of validity of sanction has been raised at the trial and the courts have passed appropriate orders upon arriving at a conclusion that the order of sanction was defective. [See State of Karnataka through CBI vs. C. Nagarajaswamy JT 2005 (12) SC 349].

The question as to whether sanction is necessary or not, thus, in an appropriate case, may have to be determined at different stages. [See Raj Kishor Roy vs .Kamleshwar Pandey and Another (2002) 6 SCC 543].

The State before us has, however, taken a stand different from one taken before the High Court, as it was submitted that it was not a case where there was no valid order of sanction for prosecution of the First Respondent under the 1988 Act and, thus, the entire question should be directed to be considered at a later stage.

Having regard to the facts and circumstances of the case and keeping in view the decision of this Court, we are of the opinion that no order of sanction to prosecute the First Respondent under Section 197 Cr. P.C. was necessary to be obtained from the State.

The High Court was, thus, not right in passing the impugned order particularly in view of the fact that a valid order of sanction was granted in relation to the offences committed by the First Respondent under the 1988 Act. The impugned order of the High Court, therefore, cannot be sustained, which is set aside accordingly.

The appeal is allowed. No costs.