State Of H.P vs M.P.Gupta on 9 December, 2003

Equivalent citations: AIR 2004 SUPREME COURT 730, 2003 AIR SCW 6887, 2004 (1) SRJ 55, 2003 (7) SLT 680, 2004 CRILR(SC&MP) 99, 2004 (1) BLJR 429, 2004 CALCRILR 473, 2004 ALL MR(CRI) 519, 2004 (2) SCC 349, 2004 SCC(CRI) 539, 2003 (10) SCALE 522, (2004) 17 ALLINDCAS 317 (DEL), (2004) 75 DRJ 59, (2004) 109 DLT 82, 2004 CHANDLR(CIV&CRI) 530, (2003) 4 CURCRIR 490, (2004) 2 EASTCRIC 53, (2004) 1 MADLW(CRI) 358, (2004) 2 ORISSA LR 105, (2004) 27 OCR 315, (2004) 1 RAJ CRI C 275, (2004) 1 RECCRIR 197, (2004) 1 SIM LC 231, (2003) 8 SUPREME 706, (2004) 2 ALLCRIR 1153, (2003) 10 SCALE 522, (2004) 1 UC 517, (2004) 13 INDLD 1009, (2004) 2 BOMCR(CRI) 112, (2004) 48 ALLCRIC 275, (2004) 1 CHANDCRIC 73, (2004) 1 ALLCRILR 694, (2004) 1 CRIMES 132, (2004) 1 CURLJ(CCR) 397, 2004 (1) ALD(CRL) 283, 2004 (1) ANDHLT(CRI) 236 SC, (2004) 1 ANDHLT(CRI) 236

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Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  339 of 1997
Appeal (crl.)  351 of 1997

PETITIONER:
State of H.P.

RESPONDENT:
M.P.Gupta

DATE OF JUDGMENT: 09/12/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J.

These two appeals are interlinked as the point involved revolves round the scope and ambit of Section 197 of the Code of Criminal Procedure, 1973 (for short the 'Code'). The Himachal Pradesh High Court by the impugned judgment held that in the absence of requisite sanction in terms of Section 197 of the Code proceedings initiated against the respondent (hereinafter referred to as the 'Accused') cannot proceed. Two proceedings were initiated against the accused, one was for alleged commission of offences punishable under Section 120-B, Section 420 read with Section 511 of the

Indian Penal Code, 1860 (for short the 'IPC'), Section 5(2) (1) (d) of the Prevention of Corruption Act, 1947 (for short the 'Old Act') corresponding to Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short the 'New Act'). The Special Judge (Forests), Shimla, directed the accused to be charged accordingly by his order dated 5.8.1995. In the other case charges were framed against the accused on 15.11.1995 for the offence punishable under Section 467, 468, 471, 420, 120-B IPC and Section 5(2) (1) (d) of the Old Act corresponding to Section 13 (1)(d) of the New Act.

Sheaving out unnecessary details, the accusations leading to the framing of charges are as under:-

> The Controller of Stores, Himachal Pradesh had approved a rate contract for the purchase of galvanized steel barbed wires for fencing at the ex factory rate of Rs.8400/- per M.T. This rate contract was valid up to the period ending 30.9.1985. No rate contract was approved in respect of this item for the period beginning 1.10.1985. On 20.10.1985, the Chief Sales Officer and the Executive Officer of H.P. Agro Industries Corporation wrote two identical letters to the Chief Conservator of Forests (T), Himachal Pradesh offering to supply barbed wire/GI wire and U staples to the forest department. The rates quoted were Rs.10,500/- per M.T. for barbed wire (Hot dip) and Rs.10,000/- per M.T. for electroplated barbed wire. A request was made to the Chief Conservator of Forests to direct all the field officers working under his control to buy their requirements of the above-mentioned items by placing their supply orders with the H.P. Agro Industries Corporation. The petitioner, who was then the Chief Conservator of Forests, on 30.10.1985 issued a circular letter to all the Conservator of Forests working under him advising them to work out their requirements of GI and barbed wires and in the absence of a rate contract to place orders for the supply thereof with the H.P. Agro Industries Corporation, who had offered to make the necessary supply of both these items immediately.

Consequent upon such instructions having been issued by the petitioner, various forests circles placed the supply orders to the extent of about 1200 M.T. of barbed wire with the H.P. Agro Industries Corporation within a period of less than one month. All these orders were booked through M/s. Gupta Pipes, Industrial Area, Dharampur, District Solan, who had been appointed as the booking agent by the H.P. Agro Industries Corporation on 25.10.1985 for the purpose of procuring the supply orders from various indenting officers. The H.P. Agro Industries Corporation, vide its letter dated 6.11.1985 had intimated to all Conservators of Forest in Himachal Pradesh about the firm M/s. Gupta Pipes having been appointed as their authorized booking agent. They were also intimated that a representative of the said firm would be visiting their offices for collecting the necessary supply orders for and on behalf of the H.P. Agro Industries Corporation.

In the meanwhile, some of the local units manufacturing barbed wires submitted a complaint to the Minister of State for Forests complaining against the procurement of barbed wire by the forest department from the H.P. Agro Industries Corporation in violation of the normal procedure and without obtaining the requisite non-availability certificate from the Controller of Stores. It was also complained that the sources adopted by the H.P. Agro Industries Corporation for procuring the barbed wire for supply to the forest department were from the units located at Dharampur. This

complaint was forwarded by the Minister to the accused in his capacity as Chief Conservator of Forests on 20.11.1985 for his comments. The Additional Controller of Stores on 26.11.1985 also took an objection to the purchases having been effected by the forest department from the H.P. Agro Industries Corporation without obtaining the requisite non-availability certificate from the Controller of Stores. It was also suggested that the supply orders already placed with the said Corporation may be cancelled forthwith. Some reports also appeared in the press alleging serious irregularities in the purchase of barbed wire by the forest department. Instructions were also issued by the State Government through its Secretary in the forest department to all the Conservator of Forests in Himachal Pradesh to cancel all the supply orders in respect of barbed wire/GI wire placed with the H.P. Agro Industries Corporation. Consequently, against the supply order of 1200 M.T. placed with H.P. Agro Industries Corporation, supply of only 17.64 M.T. was actually effected through the Corporation, before the cancellation could be intimated to the suppliers.

An enquiry committee was appointed by the State Government. The then Divisional Commissioner who conducted the enquiry reported that apparent irregularities were committed with the apparent intention to help M/s. Gupta Pipes. Acting on the recommendations of the Divisional Commissioner, cases for alleged commission of offences as noted supra were registered with the Enforcement Branch, South Lane, Simla. One of the cases was instituted on the basis of informations which surfaced during investigation. At the time of framing charge, legality of the proceedings was questioned by the accused. It is to be noted that sanction was accorded on 13.6.1990 which though was stated to be unnecessary and inconsequential by the State, in view of its specific stand that Section 197 of the Code has no application.

Accused took the stand that the absence of sanctions as contemplated under Section 197 of the Code and Section 6 of the Old Act (corresponding to Section 19 of the New Act) the proceedings were nonest. The trial Judge negatived the stand. Accused moved the High Court for interference. By the impugned judgments dated 5.6.1996 in Criminal Revision Nos. 105 and 106 of 1995 learned Single Judge of the High Court held that the charge framed against the accused for the offence under Sections 467, 468 and 471 IPC were to be set aside and quashed. The charge in respect of other offences, namely, Sections 420, 120-B IPC and under the Old Act read with the New Act were to be continued. However, no opinion was expressed about validity of sanction dated 13.6.1990.

In support of the appeals, learned counsel for the appellant-State submitted that the scope and ambit of Section 197 has been misconstrued by the High Court. Per contra, learned counsel for the accused submitted that the alleged acts were a part of the official duties and, therefore, a sanction was mandatory for the purpose of proceeding in the matter and in the absence thereof at the threshold the proceedings were not maintainable. Strong reliance was placed on certain observations of this Court in Shreekantiah Ramayya Munipalli v. The State of Bombay (1955 (1) SCR 1177) and Amrik Singh v. The State of Pepsu (1955 (1) SCR 1302).

The pivotal issue needs careful consideration. In Bakhshish Singh Brar v. Smt. Gurmej Kaur and Anr. (AIR 1988 SC 257), this Court while emphasizing on the balance between protection to the officers and the protection to the citizens observed as follows:-

> "It is necessary to protect the public servants in the discharge of their duties. 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 s. 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 damage to the evidence."

The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant 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 his 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.

At this juncture, we may refer to P. Arulswami v. State of Madras (AIR 1967 SC 776), wherein this Court held as under:

> "... It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable."

Prior to examining if the Courts below committed any error of law in discharging the accused it may not be out of place to examine the nature of power exercised by the Court under Section 197 of the Code and the extent of protection it affords to public servant, who apart, from various hazards in discharge of their duties, in absence of a provision like the one may be exposed to vexatious prosecutions. Section 197(1) and (2) of the Code reads as under :

> "197. (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 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.
>
> * * * (2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government."

The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance no prosecution can be initiated in a Court of Sessions under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt

of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his knowledge that such offence has been committed. So far public servants are concerned the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise power of the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty.

Such being the nature of the provision the question is how should the expression, 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', be understood? What does it mean? 'Official' according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In B. Saha and Ors. v. M. S. Kochar (1979 (4) SCC 177) it was held : (SCC pp. 184-85, para

17) "The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197 (1), an Act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution and the said provision."

Use of the expression, 'official duty' implies that the act or omission must have been done by the public 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.

It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore

implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in Matajog Dobey v. H. C. Bhari (AIR 1956 SC 44) thus :

> "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."

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 official to which applicability of Section 197 of the Code cannot be disputed. In S.A. Venkataraman v. The State (AIR 1958 SC 107) and in C. R. Bansi v. The State of Maharashtra (1970 (3) SCC 537) this Court has held that :

> "There is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the court was asked to take cognizance, although he had been such a person at the time the offence was committed."

The above position was illuminatingly highlighted in State of Maharashtra v. Dr. Budhikota Subbarao (1993 (3) SCC 339). When the newly-worded section appeared in the Code (Section 197) with the words "when any person who is or was a public servant" (as against the truncated expression in the corresponding provision of the old Code of Criminal Procedure, 1898) a contention was raised before this Court in Kalicharan Mahapatra v. State of Orissa (1998 (6) SCC 411) that the legal position must be treated as changed even in regard to offences under the Old Act and New Act also. The said contention was, however, repelled by this Court wherein a two-Judge

Bench has held thus :

> "A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 19 of the Act if he continues to be a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time, the court can take cognizance of the offence without any such sanction."

The correct legal position, therefore, is that an accused facing prosecution for offences under the Old Act or New Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. But the position is different in cases where Section 197 of the Code has application.

Section 197(1) provides that when any person who is or was a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting on 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 and (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.

We may mention that the Law Commission in its 41st Report in paragraph 15.123 while dealing with Section 197, as it then stood, observed "it appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant". It was in pursuance of this observation that the expression 'was' come to be employed after the expression 'is' to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted.

Above position was highlighted in R. Balakrishna Pillai v. State of Kerala (AIR 1996 SC 901).

That apart, the contention of the respondent that for offences under Sections 406 and 409 read with Section 120-B of 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 Munnipalli's case (supra) and also Amrik Singh's case (supra) 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, etc. v. State of Bihar (1972 (3) SCC 89) as follows :

> "As far as the offence of criminal conspiracy punishable under Section 120-B, read with Section 409, Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act is 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."

Above views are reiterated in State of Kerala v. Padmanabhan Nair (1999 (5) SCC 690). Both Amrik Singh (supra) and Shreekantiah (supra) were noted in that case. Sections 467, 468 and 471 IPC relate to forgery of valuable security, Will etc; forgery for 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.

It was submitted by learned counsel for the accused-respondent that essential ingredients of the aforesaid offences are absent. That was not the issue before either the trial Court or the High Court. It is, therefore, unnecessary for us to delve into that question.

Above being the legal position which is fairly well settled, the High Court's view cannot be maintained on the facts of the case. The impugned judgments are set aside. We make it clear that our interference shall not be construed as if we have expressed any opinion on the merits of the case.

Appeals are allowed to the extent indicated.