Supreme Court of India
Suresh Kumar Bhikamohand Jain vs Pandey Ajay Bhushan & Ors on 27 November, 1997
Author: G.N.Ray
Bench: G.N. Ray, G.B. Pattanaik

PETITIONER:
SURESH KUMAR BHIKAMOHAND JAIN

Vs.

RESPONDENT:
PANDEY AJAY BHUSHAN & ORS.

DATE OF JUDGMENT: 27/11/1997

BENCH:
G.N. RAY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

THE 27TH DAY OF NOVEMBER, 1997 Present:

Hon'ble Mr. Justice G.N.Ray Hon'ble Mr. Justice G.B.Pattanaik Kapil Sibal, Sr. Adv., A.M.Khanwilkar, A.P.Maye, Advs. for Ms.V.D.Khanna, Adv. with him for the appellant Ashok Desai, Attorney General, S.G.Page, D.V.Mirzakar, N.M.Snkhanande, D.M.Nargolkar, Advs., with him for the Respondents.

J U D G M E N T The following Judgment of the Court was delivered: G.N.RAY,J.

Leave granted. Heard learned counsel for the parties. The order of the Bombay High Court (Aurangabad Bench) dated September 10, 1996 passed in Criminal Writ Petition No. 414 of 1993 and Criminal Revision Application No. 16 of 1994, is impugned in these appeals. It will be appropriate at this stage to indicate in brief the background facts:-

(a) the appellant, at material point of time, was the President of the Jalgaon Municipality. The said Jalgaon Municipality took a decision to demolish to unauthorised encroachment (tapri). On the basis of such decision of the Municipality, the unit of anti Encroachment Department of Municipality had gone to demolish the unauthorised encroached construction on July 3, 1993. On

Shri Sita Ram @ Baban Baheti was also one of the Councillors of Jalgaon Municipality. The said councillor however, remained present at the site and tried to stop the attempt of the Municipality to demolish the unauthorised tapri. The respondent No.1, Shri Pandey Ajay Bhushan, was Collector and District Magistrate of Jalgaon and respondent No.2 Shri Dilip G.Shrirao, was Additional Superintendent of Police, Jalgon, respondent 3, Shri Prakash Mahajan, was Sub- Divisional Magistrate, Jalgaon, and respondent No.4, Shri D.S. Jog was Superintendent of Police, Jalgaon, at the relevant time. The said respondents No.1 to 4 were personally present at the site and prevented the staff of the Municipality to demolish the tapri.

(b) The appellant was away from Jalgaon and having returned to Jalgaon in the evening, came to know that the respondent were not allowing the demolition of the unauthorised tapri. The appellant went to the spot and protested against the said action of the respondents in preventing the Municipality staff from discharging their statutory obligation to demolish unauthorised construction. The respondents, however, did not accede to the protest and persuasion of the appellant. On the contrary, the respondents physically assaulted the appellant, his driver and some other including the councillors present a the spot. It has been alleged by the appellant that the respondent No.4 put a stick on the chest of the appellant and gave a violent push. The respondent No.2 caught hold of the neck of the appellant and threatened him with his revolver. The respondent No.3 had given a stick blow on the person of the appellant. The respondent No.2 also kicked and abused him. The appellant and his supporters including the driver and some of the councillors sustained injuries on account of the said high handed action of the respondents.

(c) On the next day i.e. on July 1993, the respondent No.3 issued prohibitory orders under Section 144 of Criminal Procedure Code by declaring that no demolition work could be done till July 20, 1993. On July 6, 1993 respondents issued an order suspending the action of the Municipality in removing the encroachment. On the say day, another order was issued by the respondents to the effect that no force would be used by the Municipality.

(d) The Jalgaon Municipality challenged the prohibitory orders issued under Section 144 of Cr.P.C. by filing a Writ Petition before Aurangabad Bench of Bombay High Court being Writ Petition No. 261 of 1993 on July 7, 1993. Such Writ Petition was, however, withdrawn on July 8, 1993. On July 18, 1993, the appellant filed three writ petitions being Writ Petition Nos. 2149, 2150 and 2151 of 1993 seeking various reliefs against certain actions of the State Government. Writ Petition No. 2149 of 1993 was filed by the appellant challenging the order restraining the Municipality from using any force in removing the unauthorised construction. Writ Petition No. 2151 of 1993 was filed for prohibiting the State Government from issuing any order of supercession of the Jalgaon Municipality. Such Writ Petition was filed because the appellant and other councillors had apprehended that on account of political vendatta, the persons in power would invoke action of superseding the Jalgaon Municipality.

(e) The appellant lodged a criminal complaint on July 19, 1993 being Regular C.C. No. 194 of 1993 in the Court of Chief Judicial Magistrate, Jalgaon against the said respondents under Sections 353, 332, 323, 307, 504 and 506 read with Section Indian Penal Code. The appellant examined himself as complaint on July 31, 1993. The trial court directed the appellant to produce his witnesses on August

4, 1993. On August 4, 1993 the State Government issued a letter in view of which the Writ Petition No. 2149, 2150 and 2151 of 1993 became infructuous and the High Court disposed of the said Writ Petitions by order dated Au gust 3, 1993.

(f) The appellant examined 7 witnesses in support of his complaint. The deposition of the witnesses examined expressly disclosed cognizable offence committed by the said respondents. The trial court, however, discharged the respondent No. 4 on the ground of lack of sanction but issued processes against respondents Nos. 1 to 3. The trial court also dropped the charge under Section 307 IPC.

The respondent Nos. 1, 2 and 3 moved a Criminal Writ Petition No. 414 of 1993 before the Aurangabad Bench of Bombay High Court challenging the order issuing process against them, but without disposing of such writ petition, by the order dated February 10, 1994, the High Court gave liberty to the said respondents to move applications before the trial court for recalling the order issuing issuing process process against them.

(g) The respondents Nos. 1 to 3 thereafter moved an application before the trial court for recalling of the order of issuance of process. Such application was, however, dismissed by the learned Chief Judicial Magistrate by order dated April 12, 1994. The appellant also preferred Criminal Revision Application No. 16 of 1994 before the High Court challenging the order of the trial court dated September 8, 1993 by which the complaint against respondent No.4 was dismissed on the ground of lack of sanction. The said Criminal Revisional Application No. 16 of 1994 was tagged with the Criminal Writ Petition No. 414 of 1993. By the impugned order dated September 19, 1996, the Writ Petition filed by the respondent Nos. 1 to 3 was allowed and the Criminal Revisional Application filed by the appellant was dismissed.

Mr. Kapil Sibal, the learned Senior Counsel appearing for the appellant, has contended that the impugned order of the High Court dated September 10, 1996 has not only resulted in manifest injustice meted out to the appellant but the same is patently illegal, improper and unjustified. Mr. Sibal has contended that the law is well settled about the scope of supervisory jurisdiction of the High Court Article 227 of the Constitution of India and inherent jurisdiction under Section 482 of Criminal Procedure Code and this Court has clearly indicated that such jurisdiction is extremely circumscribed.

Mr. Sibal has also submitted that the High Court failed to appreciate that in exercise of its supervisory jurisdiction under Article 227 and inherent jurisdiction under Section 482 Cr.P.C. the High Court was not to embark upon full fledge and full dressed appreciation of the evidences like a regular appellate court and on such appreciation to quash the complaint on the score of absence of requisite sanction. Mr. Sibal has also contended that the law is now well settled that if the complaint prima facie discloses cognizable offence, that trial court ought to take cognizance and issue process. The trial court can discharge the accused only when the complaint ex facie does not disclose any offence. The aforesaid principle applies with greater vigour in case of High Court exercising its jurisdiction under Section 482 Cr.P.C. The order or issuance of process is basically a matter of discretion vested in the concerned magistrate and the only exception is that such discretion should not be exercised arbitrarily and without application of mind to the facts alleged in the complaint.

Mr. Sibal has contended that the learned Chief Judicial Magistrate, Jalgaon had taken more than abundant caution in exercising the discretion which is clearly reflected in the initial order of Chief Judicial Magistrate when he postponed the issuance of process and also in the subsequent order issuing process to respondents Nos.1 to 3 and discharging respondent No.1 after taking into consideration the deposition of the complainant and the number of eye witnesses examined and also the medical certificates issued to the complainant and the injured witnesses.

Mr. Sibal has submitted that it was improper on the part of the High Court is not disposing of the writ petition but granting liberty to the said respondents to approach the trial court for recalling the order of issuance of summons by way of an interring direction even though such summons were issued on consideration of the complaint and evidence adduced in support of the complaint. In the application made by the said respondents before the learned Chief Judicial Magistrate, Jalgaon for recalling the process certain documents were annexed in an attempt to destroy evidence of the complaint even though at that stage the accused were not entitled to brig in documents in their defence. The learned Chief Judicial Magistrate Jalgaon after hearing the parties rejected the said application by confirming the order of issuance of the process.

Mr. Sibal has submitted that question of issue of process is to be determined by the considering the contents of the complaint and deciding as to whether, prima facie, such complaint makes out a case within the four corners of the offences alleged by the complaint and in case, the complaint makes out a case, which would indicate a cognizable offence, then the process is to be issued and the question of probable defence is not to be considered at that stage. Mr. Sibal has submitted that the complaint lodged by the appellant clearly makes out various offences committed by the respondent and in support of such complaint, got himself examined and had also examined a number of witnesses including the injured witnesses. On consideration of such materials and record, the learned. Chief Magistrate had issued the process against respondent Nos. 1 and 3. The applications made by the said respondents later on, pursuant to the liberty granted by the High Court, to recall the processes was also dismissed by indicating cogent reasons. Such orders of the learned Chief Judicial Magistrate should not have been interfered with by the High Court improperly exercising the revisional jurisdiction under Article 226 and 227 of the Constitution and also Section 482 of Criminal Procedure Code.

Referring to Section 202 and 204 of the Code of Criminal Procedure, Mr. Sibal has contended that till the process is issued by the Magistrate on consideration of the complaint and evidences adduced in support of the complaint by the complainant and his witnesses, the accused does not come in the picture. The accused is also not authorised to lead any evidence to destroy the complaint case at that stage. In support of such contention, Mr. Sibal has referred to the decision of this Court in Smt. Nagawwa Vs. Veeranna S. Konjalgi & Ors. (1976 (3) SCC 736). It has been helped in the said decision that the scope of enquiry under Section 202 of the Code of Criminal Procedure 1898 (pari materia same as Section 202 of Cr. P.C.1973) is extremely limited- limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint (1) on the materials placed by the complainant before the court (2) for the limited purpose of finding out whether a prima facie case for issue of process has been made out and (3) for deciding the question purely from the point of view of the complaint without at all adverting to any defence that the accused may have. It is not the

province of the Magistrate to enter into detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction which is very limited one. In proceedings under Section 202, the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not. In the decision in Nagawwa's case, this Court has also held that the Magistrate, for the purpose of considering as to whether a process should be issued or not, can take into consideration the inherent improbabilities appearing on the face of complaint or in the evidence led by the complaint in support of the allegations. The Magistrate has been given an undoubted discretion in the matter of deciding whether a process should be issued or not but such discretion has to be judicially exercised. Once the discretion has been exercised by the Magistrate, it is not open for the High Court or even this court to substitute its own discretion with a view to find out whether or not the allegations in the complaint if proved, would ultimately end in conviction against the accused.

Mr. Sibal has submitted that on two occasion the learned Magistrate had taken into consideration the complaint case and the evidences adduced by the complainant in support of allegations in complaint and having exercised his discretion judicially upon objective consideration of the complaint and complainant's evidence directed for issuing the process. In such circumstances, there was no occasion for the High Court to quash the process issued by the learned Magistrate.

Mr. Sibal has also submitted that scope and ambit of the writ petitions moved before the High Court were entirely different. The statements made in such writ petitions cannot be taken into consideration either by the High Court or by the learned Magistrate for deciding whether the complainant has prima facie made out a case for issuance of summons and consequential trial on the basis of complaint.

Coming to the question of requirement of sanction for inifiating a criminal case against the senior government servants against whom the complaint had been lodged, Mr. Sibal has contented that unless the complaint on the face of its discloses official action, no sanction can be insisted at the initial stage. In the absence of ex facie official action alleged in the complaint, the accused would be proceeded against in the criminal trial like other accused without any requirement for sanction. In support of such contention, Mr. Sibal has referred to the decision of this Court in Nagaraj Vs. State of Mysore (1964 (3) SCR 671). Mr Sibal has also referred to the decision of this Court in Chandra Deo Singh Vs. Prakash Chandra Bose (1964 (1) SCR

639). In Chandra Deo's case, it has been held that if court on consideration of the complainant's case issues process to the accused, the accused has no locus standi to take part in the criminal proceedings and the Magistrate has also no jurisdiction to allow the accused to take part in such proceedings. Mr. Sibal has also referred to the decisions of this Court in Matatajog Dubey Vs. H.C. Bhari (1955 (2) SCR

925). Mr Sibal has submitted that in Matajog Dubey's case, this Court has indicated to be considered as soon as the complaint is lodged and on the allegation contained therein. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty but facts subsequently coming to light on a police or judicial enquiry or even in the

course of prosecution evidence at the trial may establish necessity of sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of progress of the case.

Mr. Sibal has submitted that the correct principle consistent with the scheme of criminal trial at various stages under the code of Criminal Procedure has been indicated in the case of Matajog Dubey. This Court has indicated in the said decision that it was not necessary for the Court to find out whether a sanction was necessary or not at the time of taking congizance of the complaint. The accused, where sanction is necessary, is not without remedy even if cognizance is taken and process is issued because the question of sanction may still be taken into consideration at different stages of trial on the basis of further materials revealed at such stages.

According to Mr. Sibal simply because an accused is government servant and is clothed with duties to enforce law and order, he cannot claim sanction under Section 197 Cr.P.C. as a matter of course. The acts alleged against him must prima facie appear to be in the purported exercise of official duties and functions. In support of such contention, reference has been made to the decision of this Court in Pukhraj Vs. State of Rajasthan (1973 (2) SCC 701). In the said decision the purpose and import of Section 173 Cr.P.C. have been taken into consideration. It has been held that intention behind Section 197 Cr.P.C. is to prevent public servants from being unnecessarily harassed. The Section is not restricted 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 a dishonest intention. Nor is it confined to cases where the act, which constitute the offence, is the official duty of the concerned office. The test appears to be that the offence is capable being committed only by a public servant and not by any body 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. Section 197 is not 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. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of official duty. It does not apply to acts done purely in private capacity by a public servant. In Pukhraj's case, the Post Master General had kicked a clerk when such clerk requested to cancel his transfer order. Such act had no semblance of discharging any public duty by the Post Master General. hence, it was held that no sanction under Section 197 Cr.P.C., was necessary.

Mr. Sibal has contended that in the instant case, the Municipal Officials had been discharging their duties in removing unauthorised obstruction on public road. For executing such act, the local executive and police authorities were required to give necessary assistance by preventing. persons opposing execution. by the municipal staff. But unfortunately, the respondents despite holding reasonable positions in the Government Service, obstructed municipal staff from carrying on their duties and function. When the complainant being the Chairman of the Municipality protested against such improper act on the part of the accused, he and other persons were assaulted, abused and manhandled. Such acts prima facie cannot be held to have been done on purporting to be done in discharge of official duties. Hence, on the face of the allegations, no sanction was warranted. If, however at a later stage when the accused within the scheme of trial under the Criminal Procedure Code, will have occasions to lead evidence in defence they may do so. If on defence evidence, or on

materials produced in support of defence case, it transpires that a case of sanction under Section 197 Cr.P.C. has been made out, the court will be justified to stop further proceedings for want of sanction. But it will be illegal if the defence evidence is allowed to be introduced dehors the scheme of trial at a stage when defence evidence could not have been introduced. Mr. Sibal has submitted that the High Court failed to appreciate the legal import of Section 200 Cr.P.C. and not only allowed the accused to introduce evidences and materials in defence but relying on such materials passed the impugned judgment holding inter alia that a case of sanction under Section 197 Cr.P.C. has been made out. Since such order is wholly unjustified, the same should be aside by allowing this appeal.

Mr Ashok Desai learned Attorney General appearing for the respondents has submitted that question of sanction as a bar of a criminal trial and defence against the merit of the prosecution case stand on different footing. The question of sanction goes at the root because without the sanction even if a complaint discloses a case for criminal trial such trial cannot be commenced or proceeded with where such sanction is necessary. The learned Attorney General has submitted that writ petitions were filed before the High Court by the complainant and other persons for various reliefs. The facts disclosed in such writ petitions were relevant for the consideration as to the requirement of sanction under Section 197 Criminal Procedure Code in view of the fact that the accused had been acting or purporting to act in discharge of their official duties and a s such they were entitled to claim protection by way of requisite sanction under Section 197 of the Code of Criminal Procedure. Therefore, it was not improper on the part of the High Court to consider the averments in the writ petition for the purpose of deciding whether a case for sanction exists or not.

Mr. Attorney has also submitted that even on the basis of the evidences adduced by the witnesses of the complainant, a case of sanction has been clearly made out. The learned Attorney has drawn the attention of the Court to the statement of PW 1 Vasant Baburao Suryavanshi who deposed to the effect that:

> "When we started removing the tapari, Sri Baban Baheti came there and stopped me to remove the stall... That time Sri Prakash Mahajan, S.D.M. came there and told me "the situation is under his had and leave the spot along with you staff." At theat time lot of people had gathered there. There was a crowed of spectators there. I tried to remove the stall but could not succeed. At 4'O Clock accused Nos. 1 to 3 came there with 100 to 150 policemen.. the complainant, told the accused No.1 (DM) that they are authorised to remove the tapari and further told not be obstruct. As accused No.1 did not listen, I along with the complainant, councillor and our staff started removing the stall.....
>
> Complainant got flared up. Thereafter, lathi charge took place....Police brought us to the police station."

The learned Attorney has also drawn attention to the statement of PW 2 Pandurang Rathunath Kale. The said witness deposed to the following effect.

> "Then he (SDM) told me that he had taken charge of the place and he will not allow the stall to be removed. I again told SDM not to cause obstruction and allow us to do our work. Then he told me not to wait here. At that time S: Sri Jog and Rao and also came. They also told me to go away."

Our attention has also been drawn to the statement of PW 6 Babu Gangaram Suryavanshi. The said witness has stated:

> "I am working as Municipal Engineer in Jalgaon Municipal Council. On 3.7. 1993 at 7.30 A.M. as usual our Encroachment Squad went to removed in the encroachment. Shri V.V. Suryavanshi, Assistant Engineer and Shri S.L. Patil, Junior Engineer also went to the spot. At around 10.30 A.M., I got the message that Baban Baheti have opposed the squad in removing the encroachment and SDM and police had come to the spot and they are obstructing the removal of the encroachment. SDM has said that he had taken charge of the place and will not allow the encroachment to be removed. He told him to go away from the spot alongwith his staff. Complainant also asked the Collector why he was not allowing the encroachment to be removed. The Collector told him that he would not allow the encroachment to be removed. Complainant asked all of us to remove the encroachment. We all staff and Municipal Councillors started removing the encroachment. Then the complainant exhorted to remove the stall but the Collector did not allow the stall to be removed. A very large crowd had gathered there. The Collector said "do not bother about anyone put everyone in the van."

The learned Attorney has submitted that it is quite apparent from the said statements of witnesses of the complainant that a tension had developed at the place of occurrence because the Municipal Staff wanted to remove the tapari and Baban Baheti and a number of persons accompanying him opposed removal. A large number of persons also gathered at the place of occurrence. It was at that stage, the accused respondents with police force came. The Collector, Superintendent of Police and the sub-Divisional Magistrate warned the Councillors, Municipal staff and the complainant that they had taken charge of the said place and they would not allow anybody to remove the tapari. When such warning was not heeded to and the complainant and the other councillors and the Municipal staff took steps to remove the tapari, the police had to use force against the accused and others who did not listen to such warning and they were arrested and brought to the police station. The learned Attorney has submitted that even if there had been encroachment on the municipal road without any authority for which such encroachment was required to be removed, if over the proposed action of removal, a tension develops in the locality which is likely to create a law and other situation, the District Magistrate, the Superintendent of Police and other government officers against whom the complaint had been made were justified to take a decision not allow anyone to precipitate the trouble any further at that time. As a matter of fact the tapari was removed later on when the tension subsided. It was clearly made known to the complainant and other councillors and municipal staff that the police had taken charge of the place and no one would be permitted to remove the tapari at that point of item. In inspite of that the complaint, councillors and other municipal staff wanted to remove the tapari by force, the respondents had enough justification to prevent them from doing so

by exercising force. Mr. Attorney has submitted that the action on the part of the respondents was clearly in the exercise of the official duties and it is immaterial whether in discharging the duties they had exceeded the jurisdiction. Once the acts alleged by the complainant had been done in exercise or even in purported exercise of official duties, requirement of sanction under Section 197 Criminal Procedure Code is fulfilled.

The learned Attorney had submitted that in Matajog Dubey's case (supra) even though it was alleged by the complainant that the police officials and Income Tax Officers used force and assaulted, since such action was made in the purported exercise of the official duties, the Court held that a case of sanction had been made out. In Pukhraj's (supra), it has been clearly indicated that even if in discharge of official duties some excesses had been made by the concerned officer, the case of sanction must be held to be made out. As the Post Master General cannot be permitted to contend that kicking the clerks was resorted to even in the purported exercise of his official duties, it was held that in facts of the case, sanction was not necessary.

The learned Attorney has also referred to the decisions of various High Court where the question of sanction in the context of excesses committed by the police in discharging official duties have been taken into consideration. In this connection, the learned Attorney has referred to the decisions reported in AIR 1957 Madras 555, 1979 Criminal Law Journal 1018 (Patna), 1989 Criminal Law Journal 191 (Madhya Pradesh), 1996 (1) Criminal Law Journal 836 (Orissa). The learned Attorney has submitted that since the question of sanction goes at the roof of the jurisdiction of the learned Magistrate to take cognizance or to proceed further with the trial of the criminal case in the absence of required sanction, the accused must be permitted to raise the question of sanction at the threshold and it is not necessary for the accused to wait upto the stage when an accused, within the scheme of trial under the Code of Criminal Procedure, can lead evidence by way of defence as contended by Mr.Sibal. Mr. Attorney has submitted that if really a case of sanction was there, it will be wholly unjustified for the Magistrate to take abortive and futile exercise either in taking cognizance of the complaint and proceeding further with the criminal trial. Therefore, plea of bar against cognizance and consequential for want of sanction must be permitted to taken at the threshold and the usual procedure of leading evidence against the merits of the prosecution case by way of defence evidence is not required to be followed for bringing materials in support of plea of bar for want of sanction. The learned Attorney has submitted that the impugned order passed by the High Court is legal and fully justified and no interference is called for against the impugned decision.

After giving our careful consideration to the facts and circumstances of the case and the respective submission of the learned counsel for the parties it appears to us that the question of requirement of sanction under Section 197 Criminal Procedure Code should not be confused with the scheme of trial under the Code of Criminal Procedure and the stage at which an accused against whom the cognisance of offence has been taken by the learned Magistrate can lead evidence in support of his defence. The question for consideration is when a Magistrate on the basis of a complaint issued process for appearance of the accused on being satisfied that there is sufficient ground for proceeding and the accused appears before the Magistrate and takes the plea that the offence alleged to have been committed by him was in the discharge of his official duty and further he was not

removable from his office save by or with the sanction of the Government and consequently the court has no power to take cognisance except with the previous sanction of the Government as required under sub- section (1) of Section 197 of the Code of Criminal Procedure than the Magistrate would be required to decide the plea on the materials on record then existed or the accused can produce relevant material to establish the necessary ingredients for invoking Section 197(1) of the Code? According to Mr. Sibal, the Magistrate can examined the plea only with reference to the materials available on record and at that stage accused cannot have any right to produce any evidence to support his plea. According to the learned Attorney General, if the accused is debarred from producing the relevant materials to indicate that the acts complained of were in fact committed by the accused in discharge of his official duty and he can only produce the materials when the criminal proceeding reaches the stage under sub-section (4) of Section 246 in any warrant case instituted otherwise than on police report, then the very object and purpose of the provisions of Section 197 will get frustrated and the public servants will have to face irresponsible or vexatious proceeding even in respect of acts done by him in discharge of official duty. According to the learned Attorney General, therefore, though at that stage it may not be permissible for an accused to lead any oral evidence but there cannot be any bar for him to produce necessary documents including official records for the limited purpose of consideration as to whether Section 197 can be said to attracted and whether there exists a valid sanction.

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

In Matajog's case, 1995 (2) SCR 925 the Constitution Bench held that the complaint may not disclose all the facts to decide the question of applicability of Section 197, but facts subsequently

coming either on police or judicial inquiry or even in the course of prosecution evidence may establish the necessity for sanction. In S.B. Saha's case (1979 (4) SCC 177, the court observed that instead of confining itself to the allegations in the complaint the Magistrate can take into account all the materials on the record at the time when the question is raised and falls for consideration. In Pukhraj's case, (supra) this court observed that whether sanction is necessary or not may depend from stage to stage. In Matajog's case the Constitution Bench had further observed that the necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place the material on record during the course of trial for showing what his duty was and also the acts complained of were so inter related with his official duty so as to attract the protection afforded by Section 197 of the Code of Criminal Procedure. This being the position it would be unreasonable to hold that accused even though might have really acted in discharge of his official duty for which the complaints have been lodged yet he will have to wait till the stage under sub section (4) Section 246 of the Code reaches or at least till he will be able to bring in relevant materials while cross examining the prosecution witnesses. On the other had it would be logical to hold that the matter being one dealing with the jurisdiction of the court to take cognisance, the accused would be entitled to produce the relevant and material documents which can be admitted into evidence without formal proof, for the limited consideration of the court whether the necessary ingredients to attract Section 197 of the Code have been established or not. The question of applicability of Section 197 of the Code and the consequential ouster of jurisdiction of the court to take cognisance without a valid sanction is genetically different from the plea of the accused that the averments in the complaint do not make out an offence and as such the order of cognisance and/or the criminal proceedings be quashed. In the aforesaid premises were are of the considered opinion that in accused is not debarred from producing the relevant documentary materials which can be legally looked into without any formal proof, in support of the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty thereby requiring sanction of the appropriate authority.

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

We, therefore, do not think that any interference against the impugned order is called for. The appeals therefore fail and are dismissed. By abundant caution, we make it clear that on the merits of the case we have not expressed any opinion.