Supreme Court of India
Ansal Theatres And Clubotels P. ... vs State Through Cbi on 20 April, 2023
Author: K.M. Joseph
Bench: K.M. Joseph, B.V. Nagarathna, Ahsanuddin Amanullah

'REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1359 OF 2017

AMOD KUMAR KANTH — Appellant(s)

VERSUS

ASSOCIATION OF VICTIM OF UPHAAR TRAGEDY AND ANR. — Respondent(s)

J U D G M E N T

(1) By the impugned order, the High Court has dismissed the petition filed by the appellant under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.' for brevity). The petition under Section 482 Cr.P.C. was filed against the order passed by the Additional Sessions Judge Metropolitan Magistrate rejecting the closure report filed by the Central Bureau of Investigation (hereinafter referred to as 'CBI' for short) which was filed against the appellant. The closure report filed by the CBI was not accepted by the Magistrate, who instead took cognizance on the protest petition filed by the first respondent before us (Association of Victims of Uphaar Tragedy). As noted by the Signature Not Verified learned Judge in the impugned judgment on 13.06.1997, 59 Digitally signed by Nidhi Ahuja Date: 2023.05.03 12:54:40 IST Reason:

persons lost their lives and over 100 persons received serious injuries while viewing a film sitting in the balcony of Uphaar theater. The unfortunate and tragic incident led to a criminal prosecution against 16 accused. While the trial was ongoing, an application was filed under Section 319 Cr.P.C. against inter alia the present appellant. It is not in dispute that no orders were immediately passed thereon. The trial against the 16 accused culminated in the judgment dated 23.11.2007. The learned Sessions Judge while disposing of Sessions Case No. 13/07 ordered the CBI to conduct a further investigation under Section 173(8) of the Cr.P.C. The learned Sessions Judge, no doubt, proceeded to find the accused who were arraigned in Sessions Case No. 13/2007 guilty of various charges. It is after so finding and awarding appropriate sentences as against them that further investigation was ordered vide the judgment dated 23.11.2007. The CBI after investigation filed a closure report on

05.03.2009. It is therein stated that no criminal act was found against any officer other than those who were chargesheeted earlier. The first respondent thereupon, filed protest petition dated 13.05.2009. As already noticed, rejecting the closure report but accepting the complaint in the protest petition the Magistrate issued summons against the appellant. Cognizance has been taken for offences under Section 304A, 337, 338 of the Indian Penal Code, 1860 and the provisions under Section 14 of the Cinematograph Act, 1952 read with the Rules. It is the order issuing summons that was the subject matter of the proceeding under Section 482 of the Cr.P.C. and which has finally culminated in the impugned order. (2) We have heard Shri R. Basant, learned senior counsel appearing for the appellant. We have also heard Shri K.M. Nataraj, learned Additional Solicitor General, who appears on behalf of the additional Respondent namely Delhi Police. Besides, we have also heard Smt. Aparajita, learned senior counsel appearing on behalf of the CBI. We further heard Shri K.T.S. Tulsi, learned senior counsel who appears on behalf of the first respondent.

(3) Shri Basant, learned senior counsel for the appellant would essentially address three contentions before us. First and foremost, he would contend that the impugned order upholding the order of the Magistrate taking cognizance and issuing summons is afflicted with an incurable illegality. The illegality consists in both the Courts overlooking the mandatory command in Section 197 of the Cr.P.C. In other words, cognizance has been taken against the appellant for the offences comprehended within the ambit of Section 197 Cr.P.C. without seeking and obtaining sanction as is contemplated under Section 197. The Magistrate has proceeded to take cognizance in the teeth of the unambiguous bar against such cognizance. He would submit that on this short point the impugned order must perish.

(4) He would elaborate and submit on the facts, as to what transpired as follows. Somewhere in the year 1976, a decision was taken by the Lieutenant Governor of Delhi to reduce the price of cinema tickets. Bearing in mind that this decision would cause a financial loss to the theater owners, it was decided to permit the theaters to be fitted with more seats so that from the revenue earned thereunder, the loss caused by the reduction in the price of the cinema tickets could be offset. On the strength of the said decision which was taken in 1976, theaters in Delhi came to be equipped with more seats. The appellant took over as Deputy Commissioner of Police on 02.02.1979. In his capacity as the DCP, he also came to be entrusted with the duties of a licensing officer under the Cinematograph Act, 1952 and the Rules. He continued in this official position till 26.05.1980. There was a change of policy brought about by the Lieutenant Governor. The earlier decision which was taken in the year 1976 to increase seats came to be revoked. This was done on 27.07.1979. The appellant, according to the learned senior counsel, issued orders to the cinema theaters directing them to remove the extra seats and to report compliance by 04.08.1979 failing which their licenses would be suspended. The notification dated 27.07.1979 issued by the Lieutenant Governor and the order passed by the appellant dated 28.07.1979 came to be impugned in a batch of writ petitions in the High Court of Delhi. The High Court of Delhi passed an interim order dated 02.08.1979 granting protection to the owners, in that, the direction to remove the extra seats was kept in abeyance but they were forbidden from issuing tickets in regard to the additional seats. A joint inspection came to be carried out on 05.10.1979. The joint inspection recommended the complete removal of the additional seats. The appellant on 22.10.1979 filed a counter affidavit before the High Court. Therein it is pointed out that the appellant stoutly opposed the plea of the writ petitioners that additional

seats may be allowed to be preserved. On 29.11.1979, it is pointed out that the High Court rejected the report of the joint inspection team. The High Court also did not find favour with the stand taken by the appellant in the counter affidavit. The High Court by its judgment dated 29.11.1979, in short, directed the appellant to look into the matter and find out whether the seats could be continued on their being a substantial and not too rigid and inflexible compliance. Show cause notices was issued on 06.12.1979 to the theater owners. On 19.12.1979, joint inspection was carried out by the Executive Engineer (PWD), Chief Fire Officer and the Assistant Commissioner of Police (Licensing). A hearing was afforded to the theater owners. This included the owners of the Uphaar Theater. This took place on 20.12.1979. It is, thereafter, that on 24.12.1979, according to the appellant, on the recommendations of the committee, the appellant ordered the removal of 06 seats in the balcony and 56 seats in the rest of the floor of Uphaar Theater. This means a total of 62 additional seats out of the total of 100 seats which had been put in place on the strength of the notification issued in 1976 came to be ordered to be removed. It is stated by the appellant that annual inspections were carried out subsequently. The appellant came to be transferred and he vacated the post on 26.05.1980. There was another inspection which was conducted on 09.06.1983 and 17.06.1983 by a joint inspection team comprising the licensing branch of the Delhi Police. The Municipal Corporation of Delhi and the Delhi Fire Services also were part of the team. Large scale safety violations were found. The license of Uphaar theater came to be suspended on 27.06.1983. From 1980- 1997, it is pointed out that the theater in question was inspected every year. The suspension order passed against the theater in question was the subject matter of challenge in the two writ petitions and the suspension was kept in abeyance. The theater continued to operate. It is nearly 17 years after the order dated 24.12.1979, on 13.06.1997 that a fire broke out which led to the unfortunate passing away of 59 persons besides injury to several others. He would, therefore, point out that, at best or at worst, what could be projected against the appellant could not take it out of the ambit of Section

197. In other words, it could not be said despite all that has happened that he was not exercising power which flowed from his office. He did whatever he did in the discharge of his official functions. Section 197 immunises a person if his act is in exercise of his official power. Whichever way one looks at it, whatever he has done, or even if there is an excess, even if there has been negligence, he would be entitled in law to the protection afforded by Section 197 of the Cr.P.C. The Courts have ignored this salutary principle enshrined in Section 197 of the Cr.P.C. The principle enshrined by Section 197 of the Cr.P.C. is intended to protect public servants. It is not to be confused with the question as to whether an offence has been committed. The law mandates that once the person against whom cognizance is taken was holding a public office within the meaning of Section 197 of the Cr.P.C. and the act or omission attributed to him is done in the discharge of his official duties or in the purported exercise of his official duties, it would be completely illegal for the judicial officer concerned to move the law forward against him by taking cognizance in the absence of sanction. In the facts of the case before the Court, he would submit that it was clear that whatever he did or did not, it arose within the discharge of his official functions. In this regard, he drew inspiration from the following decisions: (5) In D. Devaraja v. Owais Sabeer Hussain (2020) 7 SCC 695, he drew our attention to the following:

> "71. If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate Government is obtained under Section 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act.

74. It is well settled that an application under Section 482 of the Criminal Procedure Code is maintainable to quash proceedings which are ex facie bad for want of sanction, frivolous or in abuse of process of court. If, on the face of the complaint, the act alleged appears to have a reasonable relationship with official duty, where the criminal proceeding is apparently prompted by mala fides and instituted with ulterior motive, power under Section 482 of the Criminal Procedure Code would have to be exercised to quash the proceedings, to prevent abuse of process of court." (6) Next, he drew our attention to Indra Devi v. State of Rajasthan and Another (2021) 8 SCC 768 to the following paragraphs:

> "10. We have given our thought to the submissions of the learned counsel for the parties. Section 197 CrPC seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognizance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. (See Subramanian Swamy v. Manmohan Singh [Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] .) The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. However, such sanction is necessary if the offence alleged against the public servant is committed by him "while acting or purporting to act in the discharge of his official duty" and in order to find out whether the alleged offence is committed "while acting or purporting to act in the discharge of his official duty", the yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. (See State of Maharashtra v. Budhikota Subbarao [State of Maharashtra v. Budhikota Subbarao, (1993) 3 SCC 339 : 1993 SCC (Cri) 901] .) The real question, therefore, is whether the act committed is directly concerned with the official duty.

11. We have to apply the aforesaid test to the facts of the present case. In that behalf, the factum of Respondent 2 not being named in the FIR is not of much significance as the alleged role came to light later on. However, what is of significance is the role assigned to him in the alleged infraction i.e. conspiring with his superiors. What emerges therefrom is that insofar as the processing of the papers was concerned, Surendra Kumar Mathur, the Executive Officer, had put his initials to the relevant papers which was held in discharge of his official duties. Not only that, Sandeep Mathur,

who was part of the alleged transaction, was also similarly granted protection. The work which was assigned to Respondent 2 pertained to the subject-matter of allotment, regularisation, conversion of agricultural land and fell within his domain of work. In the processing of application of Megharam, the file was initially put up to the Executive Officer who directed the inspection and the inspection was carried out by the Junior Engineer and only thereafter the Municipal Commissioner signed the file. The result is that the superior officers, who have dealt with the file, have been granted protection while the clerk, who did the paper work i.e. Respondent 2, has been denied similar protection by the trial court even though the allegation is of really conspiring with his superior officers. Neither the State nor the complainant appealed against the protection granted under Section 197 CrPC qua these two other officers.

12. We are, thus, not able to appreciate why a similar protection ought not to be granted to Respondent 2 as was done in the case of the other two officials by the trial court and High Court, respectively. The sanction from the competent authority would be required to take cognizance and no sanction had been obtained in respect of any of the officers. It is in view thereof that in respect of the other two officers, the proceedings were quashed and that is what the High Court has directed in the present case as well." (7) Next, the learned senior counsel for the appellant would contend that the Court must not be oblivious to the facts of the case as well. The appellant's acts or omissions are traceable to the year 1979-1980. The incident in question took place a good 17 years thereafter. Annual inspections took place. Other officers have had powers of oversight and exercised it from time to time. Several theaters apart from Uphaar theater had extra seats. It is only in this unfortunate case that the occurring of the fire in 1997 has led to the entire proceedings. He would submit that following the principle in State of Haryana and Others v. Bhajan Lal and Others 1992 Supp (1) SCC 335, it is a fit case where no criminality can be attached to the alleged acts and omissions. (8) Thirdly, he would also submit that, as noticed, in this narration above, though an application was filed to take action under Section 319 of the Cr.P.C. pending the trial against the original accused, no orders were passed thereon. It received final attention of the Court only when the matter was finally disposed of by way of the judgment convicting the original accused.

(9) The Court, he would point out, departed from the requirement of the law by directing investigation under Section 173(8) after the trial was concluded and judgment was pronounced. This is according to him, not permissible in law. He drew our attention to Sukhpal Singh Khaira v. State of Punjab (2023) 1 SCC 289:

> "39.(I) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under Section 319CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case

and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable." (10) He also presses for our consideration the aspect that the appellant is a highly decorated officer with an impeccable track record.

(11) Shri K. M. Nataraj, learned Additional Solicitor General, who appears for the additional respondent-Delhi Police would submit that the Delhi Police is the authority which sanctions prosecution under Section 197 of the Cr.P.C. (12) Shri K. M. Nataraj, would submit that it is indispensable for taking cognizance against a public servant within the meaning of Section 197 of the Cr.P.C., that the sanctioning authority grants sanction. He would in this regard appear to us to support the contention taken by the appellant. He also seeks fortification from the following case law: (13) He drew our attention to Abdul Wahab Ansari v. State of Bihar, (2000) 8 SCC 500 wherein this Court held:

> 7. Previous sanction of the competent authority being a precondition for the court in taking cognizance of the offence if the offence alleged to have been committed by the accused can be said to be an act in discharge of his official duty, the question touches the jurisdiction of the Magistrate in the matter of taking cognizance and, therefore, there is no requirement that an accused should wait for taking such plea till the charges are framed. In Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan [(1998) 1 SCC 205 : 1998 SCC (Cri) 1] a similar contention had been advanced by Mr Sibal, the learned Senior Counsel appearing for the appellants in that case. In that case, the High Court had held on the application of the accused that the provisions of Section 197 get attracted. Rejecting the contention, this Court had observed: (SCC pp. 217-18, para 23) "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 Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from 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." The Court had further observed: (SCC pp. 218-19, para
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> 24) "The question of applicability of Section 197 of the Code and the consequential ouster of jurisdiction of the court to take cognizance 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 cognizance and/or the criminal

> proceedings be quashed. In the aforesaid premises we are of the considered opinion that an 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."

9. 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 [AIR 1956 SC 44 : (1955) 2 SCR 925] 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. This decision was followed by this Court in Suresh Kumar Bhikamchand Jain case [(1998) 1 SCC 205 : 1998 SCC (Cri) 1] and in a recent judgment of this Court in the case of Gauri Shankar Prasad v. State of Bihar [(2000) 5 SCC 15 : 2000 SCC (Cri) 872] . The aforesaid case has full force even to the facts of the present case inasmuch as in the said case, the Court had observed: (SCC p. 21, para 14) "[I]t is manifest that the appellant was present at the place of occurrence in his official capacity as Sub-Divisional Magistrate for the purpose of removal of encroachment from government land and in exercise of such duty, he is alleged to have committed the acts which form the gravamen of the allegations contained in the complaint lodged by the respondent. In such circumstances, it cannot but be held that the acts complained of by the respondent against the appellant have a reasonable nexus with the official duty of the appellant. It follows, therefore, that the appellant is entitled to the immunity from criminal proceedings without sanction provided under Section 197 CrPC." It is not necessary for us to multiply authorities on this point and bearing in mind the ratio of the aforesaid cases and applying the same to the facts of the present case as indicated in the complaint itself, we have no hesitation to come to the conclusion that the appellant had been directed by the Sub-Divisional Magistrate to be present with police force and remove the encroachment in question and in course of discharge of his duty to control the mob, when he had directed for opening of fire, it must be held that the order of opening of fire was in exercise of the power conferred upon him and the duty imposed upon him under the orders of the Magistrate and in that view of the matter the provisions of Section 197(1) applies to the facts of the present case. Admittedly, there being no sanction, the cognizance taken by the Magistrate is bad in law and unless the same is quashed qua the appellant, it will be an abuse of the process of Court. Accordingly, we allow this appeal and quash the criminal proceeding, so far as the appellant is concerned.

(14) He also brought to the notice of the Court, the decision in Surinderjit Singh Mand v. State of Punjab, (2016) 8 SCC 722:

25. In continuation of the submissions noticed in the foregoing paragraphs, it was asserted by the learned counsel representing the respondents that the prosecution contemplated under Section 197 of the Code and the action of the Court in taking cognizance pertain to actions initiated on the basis of complaints which disclose the commission of an offence, or on a police report of such facts, or upon receipt of information from a person other than the police officer that such offence had been committed. It was asserted that the above action of taking cognizance by a court is based on alleged "facts" and not "on evidence" recorded by a court. The above distinction was drawn by referring to Section 190 of the Code which contemplates initiation of action on the basis of facts alleged against an accused, as against, Section 319 of the Code whereunder action is triggered against the person concerned only if it appears from the evidence recorded during the trial that the said person was involved in the commission of an offence. While making a reference to Section 319 of the Code, it was submitted on behalf of the respondents that cognizance taken under Section 319 of the Code was by the Court itself and therefore, the same having been based on "evidence", as also, the satisfaction of the Court itself that such person needed to be tried together with the "other accused", it seemed unreasonable that sanction postulated under Section 197 of the Code should still be required. It was pointed out that the protection contemplated under Section 197 of the Code was not a prerequisite necessity when cognizance was based on the evaluation of "evidence" by a court itself. The learned counsel emphasised that when a court itself had determined that cognizance was required to be taken, based on evidence which had been recorded by the same court, it would be undermining the authority of the court concerned if its judicial determination was considered subservient to the decision taken by the authorities contemplated under Section 197 of the Code. Based on the submissions noticed above, it was the vehement contention of the learned counsel for the respondents that the mandate of Section 197 would not extend to cases where cognizance had been taken under Section 319 of the Code.

(15) He further drew our attention to the decision in Devinder Singh v. State of Punjab, (2016) 12 SCC 87 "39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.

39.5. In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority. 39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of court at a later stage, finding to that effect is permissible and such a plea can be taken first time before the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed. 39.7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. 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 material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.

39.9. In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.

(16) Smt. Aparajita, learned senior counsel appearing on behalf of the respondent-CBI though finding herself in an unenviable position for the reason that her client CBI has, after investigation found nothing against the appellant, she stated that she would have to redeem the position, in the interest of justice. She canvassed for the position that the contention of the appellant that there was no sanction would not advance his case. She would submit that the trial Court, the High Court in appeal and what is more, this Court have found against the licensing authorities which includes the appellant. She took us through the judgment of this Court reported in Sushil Ansal v. State through CBI 2014(6) SCC 173. They read as follows:

> “134. That apart, a seating plan, which was in breach of the statutory provisions and compromised the safety requirements prescribed under the DCR, 1953, could hardly support a belief in good faith that exhibition of films with such a plan was legally justified. That is so especially when the repeal of the Notification dated 30-9-1976 by which Uphaar was permitted 100 more seats was followed by a demand for removal of the additional seats. Instead of doing so the occupiers/owners assailed that

> demand in Isherdas Sahni and Bros. v. Delhi Admn. [Isherdas Sahni and Bros. v. Delhi Admn., AIR 1980 Del 147] before the High Court of Delhi in which the High Court directed the authorities to have a fresh look from the standpoint of substantial compliance with the provisions of the Cinematograph Act. The High Court observed : (AIR p. 152, paras 11-12) "11. Proposition 3 : It has been already made clear above that the relaxation was granted after considering the public health and the fire hazard aspects. It is also clear that the very fact that the relaxation could not be granted after bearing these main considerations in mind would show that there was some rule for the extension of the sitting accommodation in these theatres within the Rules, though the provision of some of the additional seats may perhaps have been to some extent contrary to some of the Rules. It is not necessary for us to speculate on this question. It is enough to say that the result of the cancellation of the relaxation is simply the withdrawal of the relaxation. It does not automatically mean that all the additional seats which were installed in the cinema theatres were contrary to the Rules and must, therefore, be dismantled without any consideration as to how many of these seats were in consonance with the Rules and how many of them were contrary to the Rules.
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> 12. Our finding on Proposition 3 is, therefore, that the Administration will apply their mind to the additional seats with a view to determine which of them have contravened which rules and to what extent.

They will bear in mind that the compliance with the Rules is to be substantial and not rigid and inflexible." If while carrying out the above directive, the authorities concerned turned a blind eye to the fundamental requirement of the Rules by ignoring the closure of the right side exit and gangway prescribed as an essential requirement under the DCR, 1953, they acted in breach of the rules and in the process endangered the safety of the patrons.

135. We shall presently turn to the question whether the repeal of the notification had the effect of obliging the occupier/licensee of the Cinema to remove the seats and restore the gangways and exits as originally sanctioned. But we cannot ignore the fact that the occupiers/licensees of the Cinema, had opposed the removal of the additional seats even when the respondents in the writ petition had expressed concerns about the safety of the patrons if the additional seats were not removed which removal it is evident would have by itself resulted in the restoration of the right side gangway. So also the authorities ought to have insisted on the restoration of the right side exit by removal of the eight-seater box which was allowed in the year 1978, ostensibly because with the right side gangway getting closed by additional seats occupying that space the authorities considered the continuance of the right side exit to be of no practical use. Withdrawal of relaxation in the year 1979 ought to have resulted in the reversal of not only the fixing of additional seats but all subsequent decisions that proceeded on the basis thereof. It is difficult to appreciate how even applying the test of substantial compliance the authorities could consider the theatre to be compliant with the DCR, 1953 especially insofar as the same related to an important aspect like gangways and exits so very vital for speedy dispersal from the cinema hall." (17) She would also seek support from the reasoning which has been employed by both the trial Court and the High Court viz., the fact that here is an officer who

stoutly defended his action taken under order dated 28.07.1979 in the light of the notification dated 27.07.1979 revoking the earlier decision to grant extra seats which was not followed to its logical culmination when it came to the removal of the extra seats. In other words, here is a person who prevaricated without justification, what is more, contrary to the statutory rules governing the safety features which must be indispensably maintained and fostered.

(18) She also sought to draw support from the recent judgment of this Court viz., Shantaben Bhurabhai Bhuriya v. Anand Athabhai Chaudhari and Others 2021 SCC Online SC 974. She would point out on the strength of the said judgment that even if this Court finds that sans sanction, cognizance became vulnerable, it would still justify this Court directing grant of sanction be considered and given. The tragedy which occurred after 17 years could have been averted. The causa causans was the refusal to remove the extra seats which means the immediate cause for the fire and the deaths caused by the fire could have been avoided.

(19) Shri KTS Tulsi, learned senior counsel appearing on behalf of the first respondent, would submit that cognizance is taken of the offence and not the offender. No wrong has been done by the Magistrate in taking cognizance in a case as grave as the present case. He points out that the proportions of the tragedy that overtook the lives of as many as 59 persons should not be lost sight of by the Court. He reiterates the argument of Smt. Aparajita that the matter has engaged the attention of three Courts which includes this Court and the blame of officers of the licensing bodies which includes the appellant and that the same cannot be overlooked. (20) Learned senior counsel would submit that a perusal of the pleadings of the appellant would also reveal conduct unbecoming on the part of an applicant before the High Court. It is the requirement of an applicant who comes to Court to conduct himself fairly. He elaborates by pointing out that at one juncture, appellant had a case that he had personally inspected the theater. It is contrasted with his pleading wherein he took the stand that he has not personally inspected the theaters whereas, actually, inspection was done by the members of the inspecting team. In other words, here is a person, who even though is wearing the robes of a public servant, he cannot claim immunity under Section 197 of the Cr.P.C. by reason of his conduct. Learned senior counsel would submit that the change from the strict posture that he adopted when he filed the counter affidavit is inexplicable and it invited cognizance being legitimately taken. No case has been made by the appellant, in other words, for interfering with the impugned order.

ANALYSIS (21) There is no dispute that the appellant was a public servant. The period in question when he had a connection with the theater in question can be seen as 1979-1980. We have already indicated indisputably the train of events which unfolded and the genesis of which is the issuance of the notification in 1976 by the Lieutenant Governor. The number of seats were allowed to be increased. The appellant had nothing to do with that. Based on the decision, the seats were increased. Again the appellant was nowhere near the scene at the time. The appellant took over on 02.02.1979. On 27.07.1979, a notification came to be issued revoking the earlier notification issued on 13.09.1976. Acting strictly in obedience to the said notification revoking the earlier notification, the appellant did issue an order dated 28.07.1979. The subsequent notification revoking the earlier notification as also the action of the appellant came to be impugned before the High Court of Delhi. An interim order followed. The appellant did defend the action as was expected of him as an official

respondent. It is thereafter that the High Court proceeded to render its judgment. The High Court inter alia held as follows:

(22) The High Court found that the relaxations granted under the proviso to Rule 3(3) were capable of being modified or revoked and in the circumstances, the cancellations of the relaxations were justified and legal.

(23) Thereafter the Court, inter alia, went on to hold as follows:

"Proposition No. 3:

It has been already made clear above that the relaxation was granted after considering the public health and the fire hazard aspects. It is also clear that the very fact that the relaxation could not be granted after bearing these main considerations in mind would show that there was some rule for the extension of the sitting accommodation in these theaters within the Rules, though the provision of some of the additional seats may perhaps have been to some extent contrary to some of the Rules. It is not necessary for us to speculate on this question. It is enough to say that the result of the cancellation of the relaxation is simply the withdrawal of the relaxation. It does not automatically mean that all the additional seats which installed in the cinema theatres were contrary to the Rules and must, therefore, be dismantled without any consideration as to how many of these seats were in consonance, with the Rules and how many of them were contrary to the Rules.

Our finding on proposition No. 3, therefore, that the Administration will apply their mind to the additional seats with a view to determine which of them have contravened which rules and to what extent. They will bear in mind that the compliance with the Rules is to be substantial and not rigid and inflexible. With these guidelines furnished by the Act itself, they will determine which of the additional seats infringe upon the Rules and in respect of only such seats they will have the power to order removal of such seats." "Proposition 4 It is not disputed that some of the cinema theatres had existed prior to the promulgation of 1953 rules. Advisedly, Rule 3(3) makes a distinction between these theatres and other theatres which have come into existence after the promulgation of these Rules. It would appear from the opening words of Rule 3(3) that licences may be granted or reviewed in respect of preexisting theatres which were already licensed prior to 1953 for buildings exhibition without their compliance with Rule 3(2). This is the effect of the words "Notwithstanding anything in the preceding sub- rule" with which Rule 3(3) begins. The preceding sub- rule is Rule 3(2) which insists that the requirements set forth in the First Schedule of the Rules have to be fulfilled before a licence can be granted to a building which is permanently equipped for cinematograph exhibition. This distinction will surely be bore in mind by the Administration in dealing with these two kinds of buildings. This will also be in accordance with the requirement already set out in sections 12(1)(a) and 17 that the compliance with the Rules has to be substantial and not rigid or inflexible." (24) The Court found that affording an opportunity of hearing would have been a mere formality but the Court further notes that the appellant would be well advised in giving a hearing to the writ petitioners before the cancellation. This would be necessary, it was found, because the question, as to, how many of the additional seats substantially complied with the Rules and how many contravened the Rules as at present has not been determined and has to be

determined by the Administrator later.

"The main order has been passed during the currency of the licenses. But this is inevitable. Any any rate, in the light of the observations made above, the dismantling of the seats on the ground that they do no substantially comply with the Rules will be done in future after the Administration apply their mind to the question.

It cannot be expected as to exactly when this would occur. It is not, therefore, possible to ensure that any change in the sitting accommodation would be enforced by the Administration only at the end of any particular licensing period.

For the above reasons, the writ petitions are disposed of in the light of the findings given above and in the light of the observations as to the existing additional seats and as to the changes which may have to be made to them in future after the Administration examine the questions on merits and take steps. No costs. Pending the determination by the Administration as to the substantial compliance with the Rules by the additional seats or such of them as may be singled out by the Administration in each of the buildings of the licensees, the interim order dated 02.08.1979 will continue in force subject to the limitation that if no determination is made in respect of each building within one month by the Administration, then those licenses in respect of whose buildings the determination is not made shall be free to sell tickets for the additional seats in their building." (25) It is, thereafter, that, on 06.12.1979, the appellant in purported compliance of the High Court order proceeded to issue a show cause notice to the licencee of Uphaar Cinema. A committee was indeed constituted as noticed by us earlier. Finally on 24.12.1979 purporting to act on the basis of the recommendations of the Committee, the appellant ordered the removal of additional six seats from the balcony. 56 seats were directed to be removed from the other part of the theater. A total of 62 additional seats came to be ordered to be removed. As we have noticed, the unfortunate fire took place nearly 17 years thereafter.

(26) Both the Courts have drawn considerable support from the stand taken by the appellant in his counter affidavit. According to the appellant, the stand taken was in keeping with the notification which was issued revoking the earlier notification and also his notice. It is the further case of the appellant that the Court must bear in mind that whatever be his pleadings, the matter came to be considered by the High Court and the judgment followed and the appellant was duly bound to act in conformity with it. In particular, the contention is, since what was contemplated was should there be substantial compliance, it implied that additional seats could be continued.

(27) It may be true that with the benefit of hindsight, following the unfortunate tragedy which took place nearly 17 years, thereafter, the loopholes fatal as it turned out to be, the action of the appellant and the members of the Committee had been laid bare. We say this, for the reason that, as pointed out by the learned senior counsel appearing on behalf of the CBI, this aspect has received articulation at the hands of this Court in the judgment reported in Sushil Ansal1. In other words, there may have been, as found by this Court also, lapses. We are, in this case, confined to grapple with the contention of the appellant based on the impact of there being no sanction within the meaning of Section 197 of the Cr.P.C. When we consider the question of cognizance being taken in

the absence of sanction and thereby Section 197 of the Cr.P.C. being flouted it is not to be conflated and thereby confused with the question as to whether an offence has been committed. The salutary purpose behind Section 197 of the Cr.P.C. is protection being accorded to public servants. (28) The State functions through its officers. Functions of the State may be sovereign or not sovereign. But each of the functions performed by every public servant is intended to achieve public good. It may come with discretion. The exercise of the power cannot be divorced from the context in which and the time at which the power is exercised or if it is a case of an omission, when the omission takes place. (29) The most important question which must be posed and answered by the Court when dealing with the argument that sanction is not forthcoming is whether the officer was acting in the exercise of his official duties. It goes further. Even an officer who acts in the purported exercise of his official power is given the protection under Section 197 of the Cr.P.C. 1 Sushil Ansal v. State through CBI 2014(6) SCC 173 This is for good reason that the officer when he exercises the power can go about exercising the same fearlessly no doubt with bona fides as public functionaries can act only bona fide. In fact, the requirement of the action being bona fide is not expressly stated in Section 197 of the Cr.P.C., though it is found in many other statutes protecting public servants from action, civil and criminal against them. (30) Once we bear this cardinal principle in mind and judge the action or omission on the part of the appellant, we would think that it cannot be found that, having regard to the admitted facts, the appellant was not acting in the discharge of his official functions. All that happened, under his oversight starting with his notice which he issued on 28.07.1979, to the counter affidavit which he filed in the writ petitions, the subsequent show cause notice which he issued, and thereafter, finally on 24.12.1979, wherein he directed the removal of a total of 62 additional seats, all these acts were done in the exercise of his official duties. As we have already noted, even if it were to be treated as done in the purported exercise of his official duties, he would still stand protected from prosecution without sanction. This must not be confused with the question as to whether the appellant had committed any offence with which he appears to have been indicted by the Magistrate issuing summons and the High Court upholding it. The fact that the appellant had taken a certain stand in the counter affidavit would not make his subsequent act of acting upon the recommendations of a committee, an act which is not in the discharge of his official functions. The findings of this Court which we have referred to in the decision (supra) would not mean that, if they are offences committed by the persons including the appellant, they would not require sanction within the meaning of Section 197 of the Cr.P.C. The subtle and nuanced distinction between the question as to whether the offence has been committed and if an offence has been committed, whether a sanction is required for prosecuting a public servant who is alleged to have committed the same, must not be lost sight of. The learned Magistrate and the High Court would appear to have overlooked this distinction. We notice that, in fact, apparently being conscious of the legal requirement of sanction, the first respondent had sought sanction from the appropriate Government and a writ petition was also filed viz., 6238/2011 for directions to take appropriate steps in the matter. It is further noticed by us that on account of the pendency of the petition under Section 482 that no action was taken on the same.

(31) One ground which has found favour with the High Court against the appellant is that the appellant, according to the High Court, could raise the issue before the Magistrate.

Here we may notice one aspect. When the question arises as to whether an act or omission which constitutes an offence in law has been done in the discharge of official functions by a public servant and the matter is under a mist and it is not clear whether the act is traceable to the discharge of his official functions, the Court may in a given case tarry and allow the proceedings to go on. Materials will be placed before the Court which will make the position clear and a delayed decision on the question may be justified. However, in a case where the act or the omission is indisputably traceable to the discharge of the official duty by the public servant, then for the Court to not accept the objection against cognizance being taken would clearly defeat the salutary purpose which underlies Section 197 of the Cr.P.C. It all depends on the facts and therefore, would have to be decided on a case to case basis.

(32) We notice that Shri R. Basant, learned senior counsel, drew our attention to the judgment of this Court in MCD v. Uphaar Tragedy Victims Assn. (2011) 14 SCC 481 to contend that this Court has exonerated the licensing authority of liablity:

> "54. It is evident from the decisions of this Court as also the decisions of the English and Canadian Courts that it is not proper to award damages against public authorities merely because there has been some inaction in the performance of their statutory duties or because the action taken by them is ultimately found to be without authority of law. In regard to performance of statutory functions and duties, the courts will not award damages unless there is malice or conscious abuse. The cases where damages have been awarded for direct negligence on the part of the statutory authority or cases involving doctrine of strict liability cannot be relied upon in this case to fasten liability against MCD or the licensing authority. The position of the DVB is different, as direct negligence on its part was established and it was a proximate cause for the injuries to and death of victims. It can be said that insofar as the licensee and the DVB are concerned, there was contributory negligence.

55. The position of licensing authority and MCD is different. They were not the owners of the cinema theatre. The cause of the fire was not attributable to them or anything done by them. Their actions/omissions were not the proximate cause of the deaths and injuries. The licensing authority and MCD were merely discharging their statutory functions (that is granting licence in the case of the licensing authority and submitting an inspection report or issuing an NOC by MCD). In such circumstances, merely on the ground that the licensing authority and MCD could have performed their duties better or more efficiently, they cannot be made liable to pay compensation to the victims of the tragedy. There is no close or direct proximity to the acts of the licensing authority and MCD on the one hand and the fire accident and the death/injuries of the victims. But there was close and direct proximity between the acts of the licensee and the DVB on the one hand and the fire accident resultant deaths/injuries of victims. In view of the well-settled principles in regard to public law liability, in regard to discharge of statutory duties by the public authorities which do not involve mala fides or abuse, the High Court committed a serious error in making the licensing authority and MCD liable to pay compensation to the victims jointly and severally with the licensee and the DVB.

56. We make it clear that the exoneration is only in regard to monetary liability to the victims. We do not disagree with the observations of the High Court that the performance of duties by the licensing authority and by MCD (in its limited sphere) was mechanical, casual and lackadaisical. There is a tendency on the part of these authorities to deal with the files coming before them as requiring mere paperwork to dispose it. They fail to recognise the object of the law or rules, the reason why they are required to do certain acts and the consequences of non-application of mind or mechanical disposal of the application/requests which come to them. As rightly observed by Naresh Kumar's Report, there is a lack of safety culture and lack of the will to improve performance. The compliance with the procedure and rules is mechanical. We affirm the observations of the High Court in regard to the shortcoming in the performance of their functions and duties by the licensing authority and to a limited extent by MCD. But that does not lead to monetary liability." (33) He would contend on the strength of the same that this Court has found that the appellant was not liable to compensate. This Court was dealing with monetary liability. (34) Though the appellant's final decision to take action as he did by proceedings dated 24.12.1979, stood in contrast with the contents of his counter affidavit, it by itself may not obviate the need for sanction, even proceeding on the basis that the appellant could be accused of the offences which view found favour with the Magistrate.

(1) The upshot of the above discussion is that we find that the Magistrate erred in the facts of this case in taking cognizance against the appellant contrary to the mandate of Section 197 of the Cr.P.C. On that short ground alone, the appellant succeeds. The appeal is allowed. The impugned order will stand set aside. The proceedings challenged in Section 482 will stand quashed. We, however, make it clear that this will not stand in the way of the competent authority taking a decision in the matter and/ or granting sanction for prosecuting the appellant in accordance with law. In view of the fact that the appellant succeeds on the aspect of there being no sanction, we do not deem it necessary to pronounce on the two other contentions which have been pressed before us by the appellant.

....., J.

[K.M. JOSEPH] ....., J.

[B.V. NAGARATHNA] ....., J.

[ARAVIND KUMAR] New Delhi;

April 20, 2023.