Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 396 OF 2016

[Arising out of SLP [Crl.] No.3584 of 2011]

Amal Kumar Jha … Appellant

Vs.

State of Chhatisgarh & Anr. … Respondents

J U D G M E N T

ARUN MISHRA, J.

Leave granted.

The appeal arises out of the order dated 21.1.2011 passed by the High Court of Chhatisgarh at Bilaspur, thereby affirming the order dated 29.6.2002 passed by the Sessions Judge and Judicial Magistrate First Class, Dharamjaigarh, rejecting the application filed by the accused appellant for discharge on the ground of requirement of sanction to prosecute under section 197(1) Cr.P.C.

As per the prosecution case, the appellant was in-charge of Patthalgaon Hospital, District Raigad where on 1.1.1995 L.T.D. operation of Runiabai was conducted by Dr. A.M. Gupta. Thereafter she was sent home. As Runiabai vomited Dr. A.M. Gupta was approached. He sent one Aklu Ram to administer some treatment. However on 2.2.1995 she was

brought to the Primary Health Centre, Patthalgaon where she was admitted and died at 2 p.m. Her post mortem was conducted. After 25 days, First Information Report was lodged and ultimately Police filed chargesheet under section 304-A IPC on 16.10.1996 in the court of Judicial Magistrate First Class, Dharamjaigarh, as against appellant A.K. Jha, Dr. A.M. Gupta and Aklu Ram. Charges under section 304-A were framed as against Dr. A.M. Gupta and the appellant. Both of them filed an application for discharge under section 197 Cr.PC on the ground that sanction to prosecute was required and they could not be prosecuted without previous sanction. Vide order dated 27.6.2001 passed by the Judicial Magistrate First Class, the application filed by Dr. A.M. Garg had been allowed. However, the application filed by the appellant was rejected on the ground that he was in-charge of the Primary Health Centre and he failed to provide Government jeep for shifting the patient Mrs. Runiabai to District Hospital, Raigad whereas the appellant himself travelled in the jeep to attend an official monthly meeting at Raigad which was District Headquarters. The Primary Health Centre did not have ambulance. Thus, negligence was attributed to the appellant for not providing the said vehicle for shifting the patient to District Hospital, Raigad. A revision was preferred against the rejection of prayer and thereafter a petition was filed under section 482 Cr.P.C. before the High Court, the same having been dismissed, the appellant is before us.

It was vehemently contended by learned counsel appearing on behalf of the appellant that the allegations constituted failure to provide official vehicle for shifting the patient to District Hospital, Raigad. As it was an act in discharge of official duty, as such the sanction to prosecute was necessary. Whereas the application filed by Dr. A.M. Gupta had been allowed, the prayer made by the appellant has been illegally rejected. Learned counsel appearing on behalf of the State supported the order and contended that it was negligence on behalf of the appellant in not providing official vehicle to the patient due to which she could not be shifted to District Hospital, Raigad and died. Thus, sanction was not required in the instant case.

It is apparent from the facts of the instant case that the allegation against the appellant is of omission in discharge of official duty in not providing Government vehicle for shifting the patient from Primary Health Centre to District Hospital, Raigad; whereas he himself travelled in the vehicle in question for attending the monthly official meeting at the District Headquarters. In our considered opinion, it was an act or omission in discharge of the official duty. The sanction to prosecute was necessary. In this case, the accused was acting in discharge of his official duty when he refused to provide the official vehicle. The refusal is directly and reasonably connected with his official duty, thus sanction is required for prosecution as provided under section 197(1) Cr.PC. It is not

disputed that no ambulance was provided to the Primary Health Centre. The question arises whether omission to provide the official jeep which was not meant for patients, would constitute an omission in discharge of his duty. Though public servant is not entitled to indulge in criminal activities in the course of his duty but the act in question had relation to discharge of official duty of the accused. It was clearly connected to the performance of his official duty. When such is the case, sanction is required. This Court in *Shreekantiah Ramayya Munipalli v. The State of Bombay* [1955 (1) SCR 1177] has observed thus :

> "Now it is obvious that if section 197 of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning. What it says is –
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> "when any public servant ….. is accused of any *offence* alleged to have been committed by him while acting or purporting to act in the discharge of his official duty……" We have therefore first to concentrate on the word 'offence'.
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> Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the present case, the elements alleged against the second accused are, first, that there was an "entrustment" and/or "dominion"; second, that the entrustment and/or dominion was "in his capacity as a public servant"; third, that there was a "disposal"; and fourth, that the disposal was "dishonest". Now it is evident that the entrustment and/or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity. Therefore, the act complained of, namely the disposal, could not have been done in any other way. If

> it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because the second accused could not dispose of the goods save by the doing of an official act, namely officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it.
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> The act of abetment alleged against him stands on the same footing, for his part in the abetment was to permit the disposal of the goods by the doing of an official act and thus "willfully suffer" another person to use them dishonestly: section 405 of the Indian Penal Code. In both cases, the "offence" in his case would be incomplete without proving the official act.
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> We therefore hold that section 197 of the Code of Criminal Procedure applies and that sanction was necessary, and as there was none the trial is vitiated from the start. We therefore quash the proceedings against the second accused as also his conviction and sentence."

This Court in *Matajog Dobey v. H.C. Bhari* [1955 (2) SCR 925] has also considered when sanction is necessary. This Court has laid down thus :

> "Is the need for sanction to be considered as soon as the complaint is lodged and on the allegations therein contained? At first sight, it seems as though there is some support for this view in *Hori Ram's case* and also in *Sarjoo Prasad v. The King-Emperor* (1945) F.C.R. 227. Sulaiman, J. says that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution. Varadachariar, J. also states that the question must be determined with reference to the nature

of the allegations made against the public servant in the criminal proceeding. But a careful perusal of the later parts of their judgments shows that they did not intent to lay down any such proposition. Sulaiman, J. refers (at page 179) to the prosecution case as disclosed by the complaint or the *police report* and he winds up the discussion in these words: "Of course, if the case as put forward fails or the defence establishes that the act purported to be done is in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground". The other learned Judge also states at page 185, "At this stage we have only to see whether the case alleged against the appellant or *sought to be proved* against him relates to acts done or purporting to be done by him in the execution of his duty". It must be so. The question may arise at any stage of the proceedings. 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 inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for 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 the progress of the case."

In *Bhappa Singh v. Ram Pal Singh & Ors*. 1981 (Supp) SCC 12 this Court considered the grant of protection to an officer for official act done in good faith thus :

"6. In view of the circumstances mentioned in the last paragraph, there is little room for doubt that the Customs party was not out to commit dacoity either in the jewellery shop or the *chaubara*, that they also committed no trespass into either of those places, but that the purpose of the raid was to find out if any illegal activity was being carried on therein. The presence of two licensed Gold-smiths in the *chaubara* speaks volumes in that behalf. It may further be taken for granted that the Customs party was manhandled before they themselves resorted to violence, because there was no reason for them to open fire unless they were resisted in the carrying out of the raid peacefully.

7. Even though what we have just stated is a general prima facie impression that we have formed at this stage on the

materials available to us at present, it may not be possible to come to a conclusive finding about the falsity or otherwise of the complaint. But then we think that it would amount to giving a go-by to Section 108 of the Gold (Control) Act, if cases of this type are allowed to be pursued to their logical conclusion, i.e., to that of conviction or acquittal. In this view of the matter we do not feel inclined to upset the impugned order, even though perhaps the matter may have required further evidence before quashing of the complaint could be held to be fully justified. The appeal is accordingly dismissed."

In *State of Maharashtra v. Dr. Budhikota Subbarao* 1993 (3) SCC 339, this Court has considered the meaning of the 'official act' thus :

"6. Such being the nature of the provision the question is how should the expression, 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', be understood? What does it mean? 'Official' according to dictionary, means pertaining to an office. And official act or official duty means an act or duty done by an officer in his official capacity. In *S.B. Saha* v. *M.S. Kochar* (1979) 4 SCC 177 it was held: (SCC pp. 184-85, para 17)

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

> **reasonably connected with his official duty will require sanction for prosecution under the said provision**."

Use of the expression, 'official duty' implies that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. In *P. Arulswami* v. *State of Madras* (1967) 1 SCR 201 this Court after reviewing the authorities right from the days of Federal Court and Privy Council held:

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

It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining

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

> "[T]he offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty … **there must be a *reasonable connection* between the act and the discharge of official duty; the *act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty***."
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> (emphasis supplied)

If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed."

In *State of H.P. v. M.P. Gupta* 2004 (2) SCC 349 this Court in

regard to official duty has laid down thus :

> **"11.** Such being the nature of the provision, the question is how should the expression, "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", be understood? What does it mean? "Official" according to the dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity."

In *State of Orissa & Ors. v. Ganesh Chandra Jew* 2004 (8) SCC 40 this Court has laid down that protection under section 197 would be available only when the act done by the public servant is reasonably connected with the discharge of his official duty. This Court has laid down thus :

> **"7.** The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it

must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

In *K. Kalimuthu v. State by DSP* 2005 (4) SCC 512 this Court has observed that official duty implies that an act or omission must have been done by the public servant within the scope and range of his official duty for protection. This Court has laid down thus :

> **"12.** If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.
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> **15.** The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered

as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. Further, in cases where offences under the Act are concerned, the effect of Section 197, dealing with the question of prejudice has also to be noted."

In *Manorama Tiwari & Ors. v. Surendra Nath Rai* 2016 (1) SCC 594, it was held that the appellants were discharging public duties while performing surgery in a Government hospital, hence prosecution was not maintainable without sanction from the State Government.

In *State of Madhya Pradesh v. Sheetla Sahai & Ors.* 2009 (8) SCC 617, this Court has laid down thus :

"**59.** For the purpose of attracting the provisions of Section 197 of the Code of Criminal Procedure, it is not necessary that they must act in their official capacity but even where public servants purport to act in their official capacity, the same would attract the provisions of Section 197 of the Code of Criminal Procedure. It was so held by this Court in *Sankaran Moitra* v. *Sadhna Das* (2006) 4 SCC 584. The question came up for consideration before this Court in *Matajog Dobey* v. *H.C. Bhari* AIR 1956 SC 44 wherein it was held: (AIR pp. 48-49, para 17)

> "*17*. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty'. But the difference is only in language and not in substance.

The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly

necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits.

What we must find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation. In *Hori Ram Singh* v. *Crown* 1939 FCR 159 Sulaiman, J. observes:

> 'The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction.'

The interpretation that found favour with Varadachariar, J. in the same case is stated by him in these terms at p. 56:

> 'There must be something in the nature of the act complained of that attaches it to the official character of the person doing it.'

In affirming this view, the Judicial Committee of the Privy Council observed in *Gill case* : AIR 1948 PC 128 (IA pp. 59-60)

> 'A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. … The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.'
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> *Hori Ram case* 1939 FCR 159 is referred to with approval in the later case of *Lieutenant Hector Thomas Huntley* v. *King Emperor* 1944 FCR 262 but the test laid down that it must be established that the act complained of was an 'official' act appears to us unduly to narrow down the scope of the protection afforded by Section 197 of the Criminal Procedure Code as defined and understood in the earlier case. The decision in *Albert West Meads* v. *R.* AIR 1948 PC 156 does not carry us any further; it adopts the reasoning in *Gill case* AIR 1948 PC 128."

60. The said principle has been reiterated by this Court in *B. Saha* v. *M.S. Kochar* (1979) 4 SCC 177 in the following

terms: (SCC pp. 184-85, paras 17-18)

> "*17*. The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, *directly and reasonably* connected with his official duty will require sanction for prosecution under the said provision. As pointed out by Ramaswami, J. in *Baijnath* v. *State of M.P.* AIR 1966 SC 220 : (AIR p. 227, para 16)
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> > '*16*. … It is the quality of the act that is important, and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted'.
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> *18*. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him." (emphasis in original)"

In view of the aforesaid discussion, it is clear that the omission complained of due to which offence is stated to have been committed, was intrinsically connected with discharge of official duty of the appellant, as such the protection under section 197 Cr.PC from prosecution without sanction of the competent authority, is available to

the appellant. Thus, he could not have been prosecuted without sanction. It would be for the competent authority to consider the question of grant of sanction in accordance with law. In case sanction is granted only then the appellant can be prosecuted and not otherwise. Resultantly, the impugned orders are set aside, the appeal is allowed.

……..…….J.
(V. Gopala Gowda)

New Delhi;
April 26, 2016.

……..J.
(Arun Mishra)