2025 INSC 267

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
(Arising out of Special Leave Petition (Crl.) No.6898 of 2023)

SUNEETI TOTEJA **APPELLANT**

VERSUS

STATE OF U.P. & ANOTHER **RESPONDENTS**

J U D G M E N T

NAGARATHNA, J.

Leave granted.

2. The present Criminal Appeal arises out of the order dated 16.11.2022 passed by the High Court of Judicature at Allahabad, Lucknow Bench, in Application u/s 482 No.8057/2022, wherein the High Court has dismissed the petition filed by the appellant herein for quashing of the summoning order dated 12.07.2022 and the chargesheet No.01/2022 dated 02.07.2022.

3. The appellant herein is stated to be an employee of the Bureau of Indian Standards (BIS). Briefly stated, the facts giving rise to the present case are that Dr. Manisha Narayan, the respondent No.2 herein (hereinafter referred to as "complainant") had filed FIR No.610/2018 dated 30.10.2018 at the Aliganj Police Station, District Lucknow. It was stated in the said FIR that during her tenure with the Food Safety and Standards Authority of India (hereinafter "FSSAI" or "authority") in New Delhi in the capacity of an Associate Director, she was sexually harassed on multiple occasions by Dr. S.S. Ghonkrorkta, the Enforcement Director therein. Being aggrieved, she disclosed the same to her mother who then filed a complaint before the FSSAI for action to be taken under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter "POSH Act"). An Internal Complaints Committee (ICC) was constituted to investigate the allegations of the complainant and the enquiry was referred to the ICC on 04.12.2014. The enquiry report of the ICC was submitted to the Chief Executive Officer of FSSAI on 22.06.2015, which found Dr. S.S. Ghonkrorkta to be guilty of the offences charged against him

and thereby it was recommended to the Authority to register an FIR against him for offences under Sections 354, 509, 192, 197, 204, 218, 202 and 120B of Indian Penal Code, 1860 (hereinafter "IPC"), apart from taking appropriate disciplinary action against the other officers involved in the misconduct.

4. However, as per the complainant, since the Authority did not take any action against the persons involved in the offence and misconduct, she was compelled to file FIR No.610 of 2018 dated 30.10.2018, in respect of offences punishable under Sections 354, 509, 120B, 192, 197, 204, 218, 202, 468, 471 and 506 of IPC, against Dr. S.S. Ghonkrorkta and Mr. Sunil Kumar Bhadoria. It is pertinent to note that the appellant herein was neither part of the ICC proceedings, nor named in the FIR. Her name surfaced during the statement given by the complainant under Section 164 of the Code of Criminal Procedure (hereinafter "CrPC") on 14.10.2020.

5. Meanwhile, Dr. S.S. Ghonkrorkta challenged the investigation report of the ICC before the Central Administrative Tribunal, New Delhi (hereinafter "the Tribunal" for short) by filing O.A. No.1505 of 2016, and *vide* order dated 16.09.2016, the

Tribunal directed the respondents therein not to act on the report of the ICC. In the said case before the Tribunal, the complainant was arrayed as respondent No. 6 and the FSSAI was represented by its officials who were arrayed as respondent Nos.3 and 7. The appellant was posted on deputation during the period from 27.04.2016 to 25.07.2019 at the FSSAI, New Delhi. On 12.05.2016, the appellant herein was appointed as the Presiding Officer (PO) of the ICC. In her capacity as the PO of the ICC, she filed a short counter affidavit dated 16.01.2017 on behalf of respondent Nos.3, 6 and 7 therein before the Tribunal. In the said affidavit, the appellant largely defended the findings of the enquiry report submitted by the ICC. However, the complainant later asserted that she had not authorized the appellant to file the counter affidavit on her behalf and that the said counter affidavit was filed without her knowledge and consent. In response, the FSSAI, represented by the respondent Nos.3 and 7 therein, filed a Misc. Application No.1658 of 2017 before the Tribunal, seeking the amendment of the counter affidavit filed by them in O.A. No.1505 of 2016, since the complainant was willing to represent herself independently in the case. Subsequently, the

appellant was repatriated to her parent Department BIS on 25.07.2019.

6. In the interregnum, the FIR had already been filed by the complainant on 30.10.2018, though it did not name the appellant as an accused person. On 16.06.2020, the statement of the complainant under Section 161 of the Code of Criminal Procedure, 1973, (for short "CrPC") was recorded but the appellant was not named therein as well. Thereafter, on 14.10.2020, the statement of the complainant was recorded under Section 164 of the CrPC and it is here that the allegations against the appellant were brought out. These allegations primarily pertained to the counter affidavit filed by the appellant herein before the Tribunal. It was alleged that the appellant was representing the complainant before the Tribunal without her knowledge and consent and that the appellant had wrongfully submitted the affidavit before Tribunal to the effect that the complainant had authorized the appellant to represent her in those proceedings.

7. It was further alleged by the complainant that she was transferred from Delhi to Chennai during the pendency of the

proceedings before the Tribunal, and when she gave a representation to cancel her transfer, the appellant threatened her by saying that if she does not want to go to Chennai, then she can take a study leave and quit the place, or else, she would be harassed. The appellant was also allegedly involved in threatening and pressurising the complainant to withdraw the case.

8. In pursuance of these allegations, the chargesheet No.1 dated 02.07.2022 was filed in the matter and the appellant herein was arrayed as accused No. 4 thereunder. The chargesheet stated that the sanction for the prosecution of accused No.4 and others was sought under Section 197 of the CrPC, but since the sanction was not granted within the stipulated time period, the sanction for prosecution was deemed to have been received and therefore the chargesheet was filed against the accused persons for the offences punishable under Sections 509, 120B, 192, 354A, 506, 202, 218, 204 and 197 of the IPC. The Special Chief Judicial Magistrate, Lucknow, *vide* order dated 06.10.2022, took cognizance of the chargesheet and

offences stated thereunder and issued summons against the accused persons.

9. Being aggrieved, the appellant and two other co-accused persons filed a petition under Section 482 of the CrPC before the High Court, seeking quashing of the chargesheet No.1 dated 02.07.2022 and the summoning order dated 06.10.2022 passed by the Special Chief Judicial Magistrate, Lucknow. However, by the impugned order dated 16.11.2022 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Application u/s 482 No.8057/2022, the prayer of the appellant for the quashing of the chargesheet and the summoning order was dismissed. The High Court however reserved liberty to the appellant to approach the Magistrate in accordance with law and directed the trial court to release the appellant on bail.

10. It is this order of the High Court which has now been assailed by the appellant before this Court through the present Criminal Appeal.

11. We have heard learned senior counsel Ms. Rebecca John, appearing for the appellant herein; learned counsel appearing for

the respondent-State; and learned counsel, Mr. Prashant Bhushan, appearing for complainant.

12. Learned senior counsel for the appellant has submitted that the High Court was not correct in refusing to quash the chargesheet and the summoning order with respect to the appellant, having regard to the facts and circumstances of the case. It was submitted that the appellant is a government servant who had acted in the course of her official duties and therefore, cognizance could not have been taken against the offences alleged against her in the absence of a valid sanction for prosecution granted by the concerned authority. That the competent authority to grant sanction for prosecution of the appellant herein is the BIS. However, the Investigating Officer failed to send the letter seeking sanction directly to the BIS and had sent it to FSSAI on 02.12.2021, as a result of which the letter was received by the BIS only on 29.07.2022, which was way beyond the stipulated period of four months for granting sanction.

13. The learned senior counsel drew our attention to the letter Ref. No.HRD/7:062545 dated 22.09.2022 sent by BIS to the Additional Chief Secretary, Department of Home, UP Police Division/4, Lucknow. In the said letter, the BIS had *prima facie* found the appellant to have not been involved in the aforesaid crime, but the BIS sought the copy of the FIR and other relevant documents to take an appropriate decision in the matter of grant of sanction for prosecution with respect to the appellant. It is further submitted that after perusal of the relevant FIR and chargesheet, BIS had sent another letter dated 14.11.2022, wherein BIS found that the appellant was in no way related to the allegations made in the chargesheet and thus it was not a fit case for grant of sanction for prosecution. Therefore, BIS had categorically denied the sanction for prosecution of the appellant in the said case *vide* its letter dated 14.11.2022.

14. *Per contra*, the learned counsel for the respondent-State have filed their counter affidavit, wherein they have defended the action of taking cognizance against the appellant and have sought the dismissal of this criminal appeal. It was contended that the Investigating Officer had sought the sanction for

prosecution, but upon not receiving the sanction, the Investigating Officer had sought a legal opinion and on the basis of the same, the officer had proceeded to file the chargesheet against the appellant. Reliance has been placed by the counsel on the judgment of this Court in ***Vineet Narain vs. Union of India, AIR 1998 SC 889 ["Vineet Narain"],*** to contend that the time limit of three months for grant of sanction for prosecution has to be strictly adhered to and therefore, in light of the fact that no sanction was granted by the competent authority within the stipulated time period, the State was correct in proceeding on the basis of deemed sanction. Therefore, it is submitted that enough material was available on record to proceed against the appellant, and once the cognizance has been taken and the trial has commenced, it is not open for the proceedings to be quashed on the ground of refusal of sanction for prosecution.

15. Learned counsel, Sri Prashant Bhushan, has supported the impugned order and has also sought the dismissal of the present criminal appeal, since the trial court and the High Court have already taken the argument of sanction for prosecution into consideration. It was submitted that the appellant has concealed

material facts before this Court, including the fact that the appellant and the other co-accused have filed applications before the trial court for seeking discharge in the matter. That the appellant has annexed only the summoning order of the trial court to give an impression that the trial court had mechanically issued summons to the accused and not applied its mind, but in fact the trial court had also filed a separate detailed order dated 12.07.2022 while issuing process in the matter. It was also submitted that the appellant not only filed an affidavit before the Tribunal without the knowledge and consent of the complainant, but had also committed perjury by trying to protect the other accused persons of the Authority. That there has been dereliction of duty by the appellant insofar as the appellant in her capacity as the presiding officer of the ICC was duty-bound to keep the complainant informed about the proceedings in the case and to proceed in furtherance of the findings of the ICC in its investigation report.

16. With respect to the contention that the complainant did not name the appellant in the FIR and the statement under Section 161 of the CrPC is concerned, learned counsel has submitted

that the police had initially refused to file the FIR against the appellant herein since her name was not mentioned in the ICC report and later during the stage of recording of her statement under Section 161 of the CrPC, the police forced the complainant to restrict her statement to the accused mentioned in the FIR. Thus, it was only later when statement was recorded by the Magistrate under Section 164 of the CrPC that the complainant felt it was safe to explain her stance with respect to the appellant herein.

17. Learned counsel for the complainant has reiterated the argument with respect to deemed sanction upon which the prosecution against the appellant was proceeded with and has submitted that the letter of BIS which expressly refused to grant sanction was issued beyond the stipulated period for granting sanction and therefore it does not amount to a denial of sanction for prosecution. Learned counsel has placed reliance on the judgment of this Court in ***Subramanian Swamy vs. Manmohan Singh, (2012) 3 SCC 64 ["Subramanian Swamy"],*** to contend that if no decision is taken by the sanctioning authority, then at the end of the extended time limit, sanction will be deemed to

have been granted to the proposal for prosecution. It was further submitted that the issue of sanction may be raised by the appellant either at the stage of cognizance or at any subsequent stage of the trial, so as to contend that since the cognizance has now been taken in the matter, the plea of sanction for prosecution may be taken by the appellant before the trial court when they appear in compliance with the summons or at the stage of discharge. Thus, there is no occasion to examine the issue of sanction for prosecution during the exercise of the powers under Section 482 of the CrPC.

18. We have considered the material on record and the extensive submissions advanced at the Bar. The short issue for consideration before this Court is, whether, in light of the facts and circumstances of this case and the position of law apropos to the sanction for prosecution, the High Court ought to have exercised its powers under Section 482 of the CrPC to quash the chargesheet and the summoning with respect to the appellant herein.

19. The appellant herein is a permanent employee of BIS since 06.09.1999. She was holding the post of Scientist E/Director & Head (FAD) in BIS. On 27.04.2016, she was relieved from BIS to take up her assignment as the Director at FSSAI on deputation basis. She was relieved on 25.07.2019 from the FSSAI and thereafter, she reported at BIS. Therefore, the appellant was at FSSAI from 27.04.2016 to 25.07.2019. During this tenure, the appellant took over the position of Presiding Officer of ICC after the erstwhile presiding officer was repatriated to BIS, Ministry of Health on completion of her tenure in April 2016. The allegations of sexual harassment levelled by complainant date back to the year 2012. The enquiry under the provisions of the POSH Act took place during the year 2014-15 and the final enquiry report of the ICC was submitted on 22.06.2015 to the Chief Execution Officer of the Authority. Therefore, it is clear that the appellant was not in the picture or involved in the dispute till the submission of the enquiry report of the ICC in June 2015.

20. The report of the ICC was assailed by the accused Dr. S.S. Ghonkrokta before the Tribunal by filing of O.A. No.1505 of 2016 on 16.03.2016. The appellant joined FSSAI, Delhi on 27.04.2016,

after a month of filing of this Original Application before the Tribunal. In the subsequent month, she was appointed as the Presiding Officer of ICC. It is for the period thereafter, to which the allegations of the complainant pertain to.

21. The complainant in the present case has alleged that the appellant filed a counter affidavit before the Tribunal on her behalf, without the consent or knowledge of the complainant. The perusal of the said counter affidavit shows that the appellant had detailed the events that unfolded in the Authority from the time the sexual harassment complaint was filed by the complainant and till the completion of the enquiry by the ICC. The counter affidavit reproduces the conclusions and recommendations of the ICC and has therefore sought dismissal of the Original Application filed by Dr. S.S. Ghonkrokta. Thus, the said counter affidavit does not reveal any aspersions made by the appellant or the Authority against the complainant, or any averment to defend the actions of the accused Dr. S.S. Ghonkrokta. The counter affidavit has been filed by the appellant in her official capacity as the Director, FSSAI and the Presiding Officer, ICC.

22. Be that as it may. The appellant respected the desire of the complainant to represent her case independently and therefore filed M.A. No.1658 of 2017 before the Tribunal, seeking to amend the counter affidavit filed earlier. Thus, there is no criminal intent on the part of the appellant to cheat the complainant or wrongfully represent her in the proceedings before the Tribunal. Further, the question is whether, the actions of the appellant were during the course of her official duties only requiring sanction for prosecution.

23. Now coming to the contentious issue of sanction for prosecution arising in the present case, the test to decide whether sanction is necessary in a particular case is, whether, the act is totally unconnected with the official duty or whether, there is a reasonable connection with the official duty. In the present case, the letter requesting sanction for prosecution was sent to FSSAI, Delhi by the Additional Chief Secretary, Department of Home (Police), Government of UP, but the same was not sent to BIS, even though at that time, the appellant had gone back to BIS from her deputation at FSSAI. The letter seeking sanction for prosecution is said to have been received by BIS only

on 29.07.2022. By that time, the chargesheet had already been filed and the summoning order was issued by the Magistrate. Thereafter, BIS sought for further documents, including the FIR, and upon furnishing of the FIR and the chargesheet, BIS denied the sanction for prosecution of the appellant *vide* its letter dated 14.11.2022. This issue of sanction was decided by BIS within the stipulated period of four months. The relevant paragraph of the letter dated 14.11.2022 reads as under:

> "2. To examine the matter, the related documents i.e. the report of Internal Complaints Committee (ICC) and the copy of FIR was sought from FSSAI vide BIS letter dated 25 Aug 2022 and 22 Sep 2022 respectively. On perusal of the records received, the following facts are observed:
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> i. The alleged offence (based on the complaint filed by Dr. Manisha Narayan against Dr. S. S. Ghonkrokta) took place during the period May 2012 to December 2012 and the ICC submitted its report in June 2015.
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> ii. Smt. Suneeti Toteja Scientist-E was relieved on 27 April 2016 (FN) from BIS to lake up her assignment on deputation as Director in FSSAl, long after the occurrence of the alleged incident and submission of the report by the ICC. She was relieved from FSSAl on 25 July 2019 and reported back to BIS on 26 July 2019.
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> iii. Dr S.S. Ghonkrokta had filed a case in CAT (O.A. No. 1505 of 2016) for setting aside the constitution of ICC. its proceedings and findings. Smt. Suneeti Toteja had signed the

> counter affidavit (to dismiss the referred OA) in this ease in her official capacity' as the presiding officer of the ICC. alter the erstwhile presiding officer Dr. Sandhya Kalra was repatriated to the Ministry of Health on completion of her tenure in April 2016."

24. The question therefore is whether the sanction was necessary in the present case for the prosecution of the appellant, or whether the Magistrate was correct in taking cognizance against the appellant without there being any sanction.

25. For the sake of convenience, the provisions of Section 197 CrPC are reproduced hereinunder:

> "**197. Prosecution of Judges and public servants**.—(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013—
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> (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
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> (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code (45 of 1860).

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

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued

under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 (43 of 1991), receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

26. The object and purpose of the aforesaid provision was recently reiterated by this Court in the case of ***Gurmeet Kaur vs. Devender Gupta, 2024 SCC OnLine SC 3761***, which reads as follows:

> "22. … the object and purpose of the said provision is to protect officers and officials of the State from unjustified criminal prosecution while they discharge their duties

within the scope and ambit of their powers entrusted to them. A reading of Section 197 of the CrPC would indicate that there is a bar for a Court to take cognizance of such offences which are mentioned in the said provision except with the previous sanction of the appropriate government when the allegations are made against, *inter alia*, a public servant. There is no doubt that in the instant case the appellant herein was a public servant but the question is, whether, while discharging her duty as a public servant on the relevant date, there was any excess in the discharge of the said duty which did not require the first respondent herein to take a prior sanction for prosecuting the appellant herein. In this regard, the salient words which are relevant under sub-section (1) of Section 197 are "*is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction*". Therefore, for the purpose of application of Section 197, a *sine qua non* is that the public servant is accused of any offence which had been committed by him in "discharge of his official duty". The said expression would clearly indicate that Section 197 of the CrPC would not apply to a case if a public servant is accused of any offence which is *de hors* or not connected to the discharge of his or her official duty. However, there are a line of judgments which have considered this expression in two different ways which we shall now advert to."

27. In ***Amod Kumar Kanth vs. Association of Victim of Uphaar Tragedy, 2023 SCC Online SC 578*** disposed of by a three-Judge Bench of this Court on 20.04.2023, of which one of us (Nagarathna, J.) was a member, it was observed that the question of cognizance being taken in the absence of sanction

and thereby Section 197 of the CrPC being flouted 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 CrPC is protection being accorded to public servants. In paragraphs 28, 29 and 31, it was observed as under:

> "(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.
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> (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. 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.
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> (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.

> (32) 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."

It was concluded that learned Magistrate had erred in the facts of the said case in taking cognizance against the appellant therein contrary to the mandate of Section 197 of the CrPC and on that short ground alone, the appeal was allowed and the proceedings challenged in Section 482 CrPC were quashed. However, it was observed that the same would not stand in the way of the competent authority taking a decision in the matter and/or granting sanction for prosecuting the appellant therein in accordance with law.

28. In another case titled ***Amrik Singh vs The State of PEPSU, AIR 1955 SC 309***, this Court explained the scope of Section 197 of CrPC as follows:

> "8. ... It is not every offence committed by a public servant that requires sanction for prosecution under section 197(1) of the Code of Criminal Procedure; 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; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution."

The Court thereunder further concluded that:

> "12 ... The result then is that whether sanction is necessary to prosecute a public servant on a charge of criminal misappropriation, will depend on whether the acts complained of hinge on his duties as a public servant. If they do, then sanction is requisite. But if they are unconnected with such duties, then no sanction is necessary."

29. As per the aforementioned proposition, it is only to be seen if the accused public servant was acting in the performance of his/her official duties, and if the answer is in the affirmative, then prior sanction for their prosecution is a condition precedent

to the cognizance of the cases against them by the courts. It is therefore largely a disputed question of fact here and not a question of law. However, this fact of appellant herein acting in her official capacity is not seriously contested by the respondents herein. In the instant case, the appellant had filed the counter affidavit and interacted with the complainant in her capacity of a Presiding Officer, ICC. The correctness of the allegations with regard to the conduct of the appellant need not be ascertained herein by this Court but the fact that she was acting in her official duty is sufficient to hold that a prior sanction from the department was in fact necessary before the Magistrate taking cognizance against her. The Magistrate therefore erred in proceeding to take cognizance against the appellant without the sanction for prosecution being received from BIS, and since BIS has eventually refused to grant sanction for the prosecution of the appellant, the prosecution against the appellant could not have been sustained.

30. The argument advanced by the respondent-State and the complainant with respect to "deemed sanction" is also not tenable. Section 197 of CrPC does not envisage a concept of

deemed sanction. The chargesheet, as well as the counter affidavit of the respondent-State, have relied upon the judgment of this Court in ***Vineet Narain*** to contend that lack of grant of sanction by the concerned authority within relevant time would amount to deemed sanction for prosecution. However, a perusal of the said judgment reveals that it did not deal with Section 197 CrPC and rather it dealt with the investigation powers and procedures of Central Bureau of Investigation and Central Vigilance Commission. While it did mention that the time limits for grant of sanction for prosecution must be strictly adhered to, there is no observation to the effect that lack of grant of sanction for prosecution within the time limit would amount to deemed sanction for prosecution.

31. Similarly, learned counsel for the complainant had placed reliance on the judgment of this Court in ***Subramanian Swamy*** to lend credence to the argument of deemed sanction for prosecution. However, even the said judgment does not in any manner lay down the notion of deemed sanction. First, the said judgment dealt primarily with the Prevention of Corruption Act, 1988 and the sanction for prosecution under that Act. Secondly,

G.S. Singhvi, J. while penning his separate but concurring opinion in the said judgment, had given some guidelines for the consideration of the Parliament, one of which is to the effect that at the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the chargesheet/ complaint in the court to commence prosecution within fifteen days of the expiry of the aforementioned time limit. However, such a proposition has not yet been statutorily incorporated by the Parliament and in such a scenario, this Court cannot read such a mandate into the statute when it does not exist.

32. Therefore, we are of the opinion that the learned Magistrate was not right in taking cognizance of the offence against the appellant herein without there being a sanction for prosecution granted by the competent authority. Further, the High Court erred in not considering the fact that the sanction for prosecution was not granted by the competent authority under Section 197 of the CrPC and eventually the sanction was expressly denied by the competent authority with respect to the allegations against the

appellant. The necessary sanction not having been granted has vitiated the very initiation of the criminal proceeding against the appellant herein. Consequently, the chargesheet, the summoning order and the consequent steps, if any, taken by the trial court pursuant to the same are liable to be quashed qua the appellant herein and are thus quashed.

The appeal is therefore allowed in the aforesaid terms.

.....J.
(B. V. NAGARATHNA)

.....J.
(SATISH CHANDRA SHARMA)

NEW DELHI;
FEBRUARY 25, 2025.