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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 10th March, 2025
Date of Decision: 22nd April, 2025

\+ CRL.M.C. 2892/2018

AJAY KUMAR SINGH .....Petitioner

Through: Mr. Vikram Saini, Adv. with Mr. Ashwani Sharma, Brother of deceased

versus

LALIT MOHAN & ORS .....Respondents

Through: Mr. Laksh Khanna, APP SI Mukesh, Pervi Officer, SI Vivek, PTC, SI Karmvir, ASI Vijay Kr.

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\+ CRL.REV.P. 311/2018

AJAY KUMAR SINGH .....Petitioner

Through: Mr. Vikram Saini, Adv. with Mr. Ashwani Sharma, Brother of deceased

versus

DHARAM SINGH & ORS .....Respondents

Through: Mr. Laksh Khanna, APP SI Mukesh, Pervi Officer, SI Vivek, PTC, SI Karmvir, ASI Vijay Kr.

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\+ CRL.M.C. 3721/2022

AJAY KUMAR SINGH .....Petitioner

Through: Mr. Vikram Saini, Adv. with Mr. Ashwani Sharma, Brother of deceased

versus

THE STATE (GOVT. OF NCT OF DELHI) AND ORS. .....Respondents

Through: Mr. Laksh Khanna, APP SI Mukesh, Pervi Officer, SI Vivek, PTC, SI Karmvir, ASI Vijay Kr.

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

% **J U D G M E N T**

MANMEET PRITAM SINGH ARORA, J:

CRL.M.C. 2892/2018

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') impugning the order dated 20.02.2018 passed by the Additional Sessions Judge (ASJ)/Special Judge, CBI-02, Patiala House Courts, New Delhi District in Criminal Revision No. 283/2017. By the impugned order, the Revisional Court dismissed the revision petition preferred by the Petitioner against the order dated 22.04.2017 passed by the Metropolitan Magistrate – 02, Patiala House Courts, New Delhi District ('Trial Court'), whereby Complaint Case No. 43679/2016, filed by the Petitioner, was dismissed.

2. The brief facts relevant for adjudication of the present petition are as follow: The deceased Petitioner, who passed away on 23.01.2024 during the pendency of the present petition, was the registered owner of a commercial bus bearing registration number DL-1PB-3581. It is a matter of record that the Petitioner had State Transport Authority (STA) permit[1] for operating the said bus on the Shahdara-Karol Bagh route. It is stated that on 05.03.2005, while the bus was being plied at its designated route the said bus was challaned by Assistant Sub-Inspector, Chanakyapuri Traffic Circle/Respondent no. 1, for having violated the guidelines issued by the Supreme Court in **M.C Mehta v. Union of India**[2] by overtaking another bus bearing registration no. DL-1PA-6691 on Ashram Marg, New Delhi. It is

[1] permit issued by the STA to allow commercial vehicles to operate within a specific state, either for transporting goods or passengers.
[2] 1997 (8) SCC 770

stated that pursuant to the issuance of the said challan, the Petitioner's bus was impounded by Respondent No. 1 and was subsequently released on *Superdari* to the Petitioner on 06.03.2005.

2.1 A complaint was instituted by the Petitioner before the learned Trial Court for prosecuting Respondent No. 1 under Sections 406/420/467/468/471/190/192/193/34 of the Indian Penal Code, 1860 ('IPC') read with Section 340 Cr.P.C. for illegal issuance of challan dated 05.03.2005. It was contended that Respondent No. 1, being an Assistant Sub-Inspector ('ASI'), lacked the authority to impound the Petitioner's commercial bus, as per the directions of the Supreme Court in **M.C. Mehta** (supra), which mandated that enforcement of such guidelines be carried out by inter-departmental flying squads headed by SDM or other higher-ranking officer. It is further stated in the complaint that the Petitioner was unlawfully detained by Respondents Nos. 1 and 2, who also misbehaved with the passengers on board the bus. It is stated that Petitioner despite alerting Respondent No. 3, the then Traffic Inspector, through a mobile call, no remedial action was taken. It was further stated that the Petitioner approached Respondent No. 4, the then ACP Traffic, and Respondent No. 5, the then DCP Traffic, but to no avail and a false challan was prepared by the Respondent No. 1 at the instance of Respondent No. 3. In view thereof, the Petitioner sought initiation of criminal proceedings against the Respondents under Sections 406/420/467/468/471/190/192/193/34 of IPC read with Section 340 of Cr.P.C.

2.2 After perusing the materials available on record, the learned Trial Court vide order dated 22.04.2017, dismissed the criminal complaint filed by the Petitioner against the Respondents, holding that there was no prima facie evidence to substantiate the allegation that the challan was bogus or

was fabricated by the Respondent No. 1. The Trial Court further observed that the issuance of the challan constituted an act done in the discharge of official duties by a public servant, and as such, prosecution could not proceed in the absence of prior sanction from appropriate authority under Section 197 Cr.P.C., which was admittedly not placed on record. Consequently, the learned Trial Court held that no summons could be issued against Respondent No. 1, and, by necessary implication, no proceedings could be initiated against the remaining Respondents either.

2.3 The Petitioner impugned the order dated 22.04.2017, by filing Criminal Revision Petition No. 283/2017 before the Court of Sessions ('ASJ'). The learned ASJ vide impugned order dated 20.02.2018 upheld the order passed by the learned Trial Court and dismissed the Criminal Revision, preferred by the Petitioner herein.

2.4 Feeling aggrieved by the orders passed by the learned Trial Court and learned ASJ, Petitioner herein has preferred this petition under Section 482 of the Cr.P.C. invoking the inherent jurisdiction of this Court.

2.5 At the hearing held on 29.04.2024, this Court was apprised that the Petitioner has since passed away. The learned counsel for the Petitioner sought time to file an appropriate application for substitution of the legal heirs of the Petitioner. However, on the subsequent date, i.e., 21.10.2024, the learned counsel for the Petitioner informed the court of his inability to establish contact with the family members of the deceased Petitioner and accordingly sought discharge from the matter. The counsel was accordingly discharged, and Court notice was issued to the family of the Petitioner at his given address to find out if they wish to pursue the matter. On 03.02.2025, one Mr. Ashwini entered appearance and stated that he is the brother of the deceased and expressed his willingness to pursue the present petition. It is a

matter of record that no application for substitution was filed by Mr. Ashwini under the relevant provisions of law however, when the matter was thereafter taken up on 10.03.2025, the same learned counsel who represented the deceased Petitioner appeared on behalf of Mr. Ashwini. While no formal application was filed, the learned counsel appearing for Mr. Ashwini made an oral prayer to continue the proceedings in his capacity as the brother of the deceased petitioner.

2.6 Considering the peculiar facts and circumstances of the case, and in furtherance of the ends of justice, this Court, in exercise of its inherent powers under Section 482 Cr.P.C., permitted Mr. Ashwini to addresses arguments in the present petition. Reliance in this regard was placed on the principles laid down in (Re: **Praban Kumar Mitra v. State of West Bengal and Another**[3])

Arguments of Petitioner/Mr. Ashwini

3. Learned counsel for the Petitioner stated that the criminal complaint was dismissed by the impugned orders solely on the ground of lack of sanction from the appropriate authority under Section 197 Cr.P.C. He stated that, in facts and circumstances of the present case, such sanctions were not legally required.

3.1 He stated that Respondent No. 1 issued the impugned challan in violation of the Supreme Court's directions in **M.C. Mehta** (supra), as the challan was issued by an ASI of Traffic Police, however, as per direction ('g') of the said judgment, enforcement of the Court's directions was required to be undertaken by flying squad team headed by an SDM along with an ACP or other higher-ranking officer. Accordingly, it was stated that issuance of the challan by Respondent No.1 was not an act in discharge of

[3] 1958 SCC Online SC 79

his official duty and consequently, sanction under Section 197 Cr.P.C. was not required.

3.2 He further placed reliance on a reply received under the Right to Information act (RTI) from P.C. Chaturvedi, Dy. Commissioner (Enf./PCD), Transport Department, Delhi-110054, which stated that the flying squad constituted under the SDM had ceased to function as of 31.03.2001. Thus, the act of Respondent No. 1, were ultra vires of his official duty.

3.3 He stated that on 08.06.2006 in compliance with Section 197 Cr.P.C., the Petitioner applied to the Home Secretary, Government of India, seeking sanction against the Respondents. However, no response was received from the office of Home Secretary.

3.4 He stated that the non-response from the Home Secretary's office ought to be construed as a case of "implied" or "deemed" sanction. In support reliance was placed on the judgment of Supreme Court in **Subramanian Swami v. Manmohan Singh & Ors**[4] wherein it was suggested, by way of recommendation to Parliament, that a failure to decide on sanction within a stipulated timeframe should result in a deemed sanction, thereby enabling the prosecuting agency or private complainant to proceed with filing the chargesheet or complaint within 15 days of such lapse.

Argument of Respondent

4. Mr. Laksh Khanna, learned APP, stated that the actions of Respondent No. 1, which are the subject matter of this petition, were carried out in the official discharge of his duty as an ASI of Traffic Police. He stated that the learned Trial Court rightly held that there was no prima facie evidence on record to establish that the challan in question was bogus or fabricated.

[4] (2012) 3 SCC 64

4.1 He stated that, upon perusal of the judgment of Supreme Court in **M.C. Mehta** (supra), makes it evident that while the flying squad, constituted pursuant to the Supreme Court's decision were to be headed by the SDM or ACP, the judgment did not mandate their personal presence for each enforcement action. He stated that their role is supervisory in nature and it cannot be contended that the Supreme Court intended that the SDM or ACP to personally impound vehicles under Section 207 of the Motor Vehicles Act, 1988 (Motor Vehicles Act). He stated that the Motor Vehicles Act itself allows for the delegation of power to officers of the rank of ASI and Sub-Inspector for vehicle impounding, therefore, the Respondent No. 1's act of impounding the petitioner's bus does not violate any guideline issued by the Supreme Court.

4.2 Regarding the issue of sanction, he relied on the judgment of the Supreme Court in **Amal Kumar Jha v. State of Chhattisgarh**[5], wherein it was held that public servants are protected under Section 197 of the Cr.P.C. if the alleged act bears a reasonable nexus with the discharge of their official duty, even if the officer has exceeded his authority. He stated that the nature of the offence is not the test but whether the conduct in question was committed while the public servant was acting in his official capacity.

4.3 He stated that Respondent No. 1's actions were carried out in the discharge of his official duties and no sanction for the prosecution of Respondent No.1 and other Respondents had ever been granted by the appropriate authority. And, therefore, in the absence of such sanction, their actions cannot be deemed to have exceeded their official authority.

[5] 2016 (6) SCC 734.

Analysis and Findings

5. This Court has heard the learned counsels for the parties and perused the record.

6. The case of the Petitioner against Respondents Nos. 1 and 2 is that Respondents Nos. 1 and 2 wrongfully issued a challan on 05.03.2005 against his bus, violating the Supreme Court's directions in **M.C. Mehta** (supra). The Petitioner stated that Respondent No. 1, an ASI of Traffic Police and Respondent No. 2, a Constable of Traffic Police, were not authorized to issue the impugned challan, as per clause ('g') of the judgment, which required a flying squad team to be led by an SDM, along with an ACP or other higher-ranking officer, for enforcing the said directions.

7. The case of Petitioner against Respondents Nos. 3 to 7, who are the supervising officers, is that against the alleged illegal action of that Respondents Nos. 1 and 2, Petitioner had lodged complaints with Respondents Nos. 3 to 7 at the contemporaneous time. However, no action was taken by the supervising officers against Respondents Nos. 1 and 2.

8. The Trial Court and the Revisional Court dismissed the Petitioner's criminal complaint and revision petition, finding no prima facie evidence that the impugned challan was bogus or fabricated. Further, both the Courts below held that the act of issuing the challan was one performed in the discharge of official duties of Respondent No. 1 and, therefore, even assuming that the Respondent No. 1 exceeded the power vested in him (by impounding the Petitioner's bus); since the said Act was done in discharge of his official duty, therefore, before filing of the criminal complaint; the complainant required prior sanction from competent authority under Section 197 Cr.P.C.

9. The Petitioner disputed this finding, contending that Respondent No. 1 and 2 were not acting in discharge of any official duty and, therefore, no sanction under Section 197 Cr.P.C. was required. Additionally, it is stated that the Petitioner had already applied for sanction under Section 197 Cr.P.C. vide letter dated 08.06.2006[6] but received no response. The Petitioner contends that this lack of response from the competent authority should be construed as "deemed sanction".

10. In light of these facts and material available on record, two key questions arise before this Court for consideration:

i. In the facts of this case, is prior sanction under Section 197 of the Cr.P.C. required to prosecute the Respondents?

ii. Does the absence of a response from the appropriate authority to the Petitioner's sanction request constitutes deemed sanction?

In the facts of this case, is prior sanction under Section 197 of the Cr.P.C. required to prosecute the Respondents?

11. It is a well-established principle of criminal law that a Magistrate's jurisdiction to take cognizance of an offence under Section 190 Cr.P.C. is restricted by Section 197 Cr.P.C., when an accused is a public servant. This provision mandates prior sanction from the competent authority before prosecution can proceed, ensuring that public servants are protected from frivolous or vexatious litigation for acts performed in the discharge of their official duties.

11.1 However, an important exception to this rule exists i.e., if the alleged act committed by the public servant falls outside the scope of his/her official duty, meaning it is not intrinsically connected to the discharge of their public functions then the bar under Section 197 Cr.P.C. does not apply. In such

[6] Annexure P-8

cases, the Magistrate may take cognizance of the offence under Section 190 Cr.P.C. without requiring prior sanction. This exception serves to balance the protection afforded to public servants with the principle that no individual, including those in public office, should be immune from legal accountability for acts that are criminal in nature and beyond the scope of their official functions.

11.2 Before dwelling further in adjudicating the said issue it would be apposite to refer to a recent judgement of Supreme Court in **Om Prakash Yadav v. Niranjan Kumar Upadhyay**[7], wherein the Court summarized the position of law regarding the necessity of prior sanction under Section 197 Cr.P.C., before the Trial Court can take cognizance of offence alleged to be committed by public servant. The relevant extract of the said Judgement reads in Para 65 and the most appropriate sub-paras are paras (vii) and (ix) are as under:

> "65. Thus, the legal position that emerges from a conspectus of all the decisions referred to above is that it is not possible to carve out one universal rule that can be uniformly applied to the multivarious facts and circumstances in the context of which the protection under Section 197 Cr.P.C. is sought for. Any attempt to lay down such a homogenous standard would create unnecessary rigidity as regards the scope of application of this provision. In this context, the position of law may be summarized as under: —
>
> …
>
> **(vii)** **If in performing his official duty, the public servant acts in excess of his duty, the excess by itself will not be a sufficient ground to deprive the public servant from protection under Section 197 Cr.P.C. if it is found that there existed a reasonable connection between the act done and the performance of his official duty.**
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> **(ix)** The legislature has thought fit to use two distinct expressions "acting" or "purporting to act". The latter expression means that even if the alleged act was done under the color of office, the protection under Section 197 Cr.P.C. can be given. However, this protection must not be

[7] 2024 SCC OnLine SC 3726

> excessively stretched and construed as being limitless**. It must be made available only when the alleged act is reasonably connected with the discharge of his official duty and not merely a cloak for doing the objectionable act.**
>
> **…**
>
> (Emphasis Supplied)

11.3 To substantiate its claim that Respondent No. 1 was not "acting" or "purporting to act" in the discharge of his official duty, the Petitioner has relied on direction ('g') issued by the Supreme Court in the judgment of **M.C. Mehta** (supra). The Petitioner contends that Respondent No. 1 lacked the authority to impound the vehicle, as such action must be carried out by an officer of the rank of SDM or ACP, or higher.

12. In the considered opinion of this Court the Petitioner's contention is incorrect. The Supreme Court's decision in **M.C. Mehta** (supra) mandated all authorities entrusted with administration and enforcement of Motor Vehicles Act, to ensure compliance of the directions issued therein. The relevant portion of the Supreme Court order reads as under:

> ANNEXURE
>
> **1.** After hearing learned counsel for the parties and learned amicus curiae, for reasons indicated separately, in exercise of the power of this Court under Article 32 read with Article 142 of the Constitution of India, we hereby give the following directions, namely:
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> *A.* **The Police and all other authorities entrusted with the administration and enforcement of the Motor Vehicles Act and generally with the control of the traffic shall ensure the following**:
>
> (*a*) No heavy and medium transport vehicles, and light goods vehicles being four-wheelers would be permitted to operate on the roads of the NCR and NCT, Delhi, unless they are fitted with suitable speed-control devices to ensure that they do not exceed the speed-limit of 40 kmph. This will not apply to transport vehicles operating on inter-State permits and national goods permits. Such exempted vehicles would, however, be confined to

such routes and such timings during day and night as the police/transport authorities may publish. It is made clear that no vehicle would be permitted on roads other than the aforementioned exempted roads or during the times other than the aforesaid time without a speed-control device.

(*b*) In our view the scheme of the Act necessarily implies an obligation to use the vehicle in a manner which does not imperil public safety. The authorities aforesaid should, therefore, ensure that the transport vehicles are not permitted to overtake any other four-wheel motorised vehicle.

(*c*) They will also ensure that wherever it exists, buses shall be confined to the bus lane and equally no other motorised vehicle is permitted to enter upon the bus lane. We direct the Municipal Corporation of Delhi, NDMC, PWD, Delhi Government and DDA, Union Government and the Delhi Cantt. Board to take steps to ensure that bus lanes are segregated and road markings are provided on all such roads as may be directed by the police and transport authorities.

(*d*) They will ensure that buses halt only at bus-stops designated for the purpose and within the marked area. In this connection also Municipal Corporation of Delhi, NDMC, PWD, Delhi Government, DDA and Union of India and Delhi Cantt. Board would take all steps to have appropriate bus-stops constructed, appropriate markings made and "bus-bays" built at such places as may be indicated by transport/police authorities.

(*e*) Any breach of the aforesaid directions by any person would, apart from entailing other legal consequences, be dealt with as contravention of the conditions of the permit which could entail suspension/cancellation of the permit and impounding of the vehicle.

(*f*) Every holder of a permit issued by any of the road transport authorities in the NCR and NCT, Delhi will within ten days from today, file with its RTA a list of drivers who are engaged by him together with suitable photographs and other particulars to establish the identity of such persons. Every vehicle shall carry a suitable photograph of the authorised driver, duly certified by the RTA. Any vehicle being driven by a person other than the authorised driver shall be treated as being used in contravention of the permit and the consequences would accordingly follow.

No bus belonging to or hired by an educational institution shall be driven by a driver who has

— less than ten years of experience;

— been challaned more than twice for a minor traffic offence;

— been charged for any offence relating to rash and negligent driving.

All such drivers would be dressed in a distinctive uniform, and all such buses shall carry a suitable inscription to indicate that they are in the duty of an educational institution.

(*g*) To enforce these directions, flying squads made up of inter-departmental teams headed by an SDM shall be constituted and they shall exercise powers under Section 207 as well as Section 84 of the Motor Vehicles Act.

The Government is directed to notify under Section 86(4) the officers of the rank of Assistant Commissioners of Police or above so that these officers **are also utilised for constituting the flying squads**.

(*h*) We direct the police and the transport authorities to consider immediately the problems arising out of congestion caused by different kinds of motorised and non-motorised vehicles using the same roads. For this purpose, we direct the police and transport authorities to identify those roads which they consider appropriate to be confined only to motorised traffic including certain kind of motorised traffic and identify those roads which they consider unfit for use by motorised or certain kinds of motorised traffic and to issue suitable directions to exclude the undesirable form of traffic from those roads.

(*i*) The civic authorities including DDA, the Railways, the police and transport authorities, are directed to identify and remove all hoardings which are on roadsides and which are hazardous and a disturbance to safe traffic movement. In addition, steps be taken to put up road/traffic signs which facilitate free flow of traffic.

(Emphasis Supplied)

13. Respondent No. 1 would fall within the authorities entrusted with enforcement of Motor Vehicles Act. In the facts of this case, the challan dated 05.03.2005 was issued for violation of the direction ('c') of the **M.C. Mehta** (supra) judgement. It is a matter of fact that the power to detain vehicles is statutorily vested in traffic police officials under Section 207 of the Motor Vehicles Act. The limits of these powers are governed by the Motor Vehicles Act. Learned APP in its written submissions dated

16.12.2023 has stated that the power to impound vehicles under Section 207 of the Motor Vehicles Act can be delegated to officers of rank of ASI and Sub-Inspector. Though no document evidencing the said delegation has been placed on record. However, Petitioner in CRL. REV. 311/2018 has placed on record a circular dated 06.10.2025 issued by DCP, Traffic HQ, Delhi[8] directing not to challan and/or prosecute buses, which halt at red signal and allow passengers to board/de-board. The said circular relied upon by the Petitioner itself indicates that the power to impound is being exercised by the traffic police officials, however circular seeks to regulate the impounding.

Moreover, the Delhi Motor Vehicles Rules, 1993 (DMV Rules), framed under the powers conferred by Sections 28, 38, 65, 95, 96, 101, 111, 138, 176, 211, and 213, read with clause (41) of Section 2 of the Motor Vehicles Act, delegate specific powers to Police Officers, which includes the power of seizure to an ASI. For instance, Rule 123(7) of Chapter X empowers a police officer not below the rank of 'Assistant Sub-Inspector' to impound such vehicles if there is reason to believe that the vehicle has been or is being used in violation of Sections 3, 4, 39, or without the permit required under Section 66(1), or in breach of any condition of such permit. The revenant extract of the said rules reads as under:

> **123.Functions and Powers of officers of Motor vehicles Department**.- (1) The State Government may delegate any power under the Act and the rules made thereunder to any person for the proper implementation of the Act and the rules made thereunder and such persons shall discharge all function and perform all duties as assigned to them most diligently.
> ….
> **(7) Any police officer(s) or the person(s) appointed as officer(s) under Section 213 of the Act and specified as such in rule 123,**

[8] Annexure P-3 in CRL. REV. 311/2018

> **not below the rank of (Assistant Sub-Inspector), shall have power, if they have reasons to believe that a motor vehicle has been or is being used in contravention of the provisions of Section 3 or Section 4 or Section 39 or without the permit required by sub-section (1) of section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used to seize and detain the vehicle**, and shall keep the same in safe custody of the nearest police station or police post or traffic police circle officer or any other designated place declared by the Delhi Police or in the designated impounding pits of the Transport Department against a proper receipt to be given by him in Form O.S.S. to the owner or in charge of the vehicle from whose custody the vehicle was seized and detained.
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> (Emphasis supplied)

14. In view of the aforesaid provisions, it is apparent that power to impound vehicles is vested in an ASI, which the officer can exercise as per the provisions of the Motor Vehicles Act and DMV Rules.

15. Be that as it may, even if it is assumed that only SDM or ACP or other high ranking officials had the authority to issue the challan and impound the bus of the Petitioner, for violation of the directions issued by the Supreme Court in in the judgment of **M.C. Mehta** (supra); even then the act of Respondent No. 1 would still fall within the scope of his official duty under the Motor Vehicles Act, albeit as an excess of authority, which is covered by the judgement of **Om Prakash Yadav** (supra); as the excess by itself will not be a sufficient ground to deprive the public servant from protection under Section 197 Cr.P.C. as there exists a reasonable connection between the act done by Respondent No. 1 and the performance of his official duty as an ASI, Traffic Police. This is also because the ground on which the challan has been issued falls within the directives issued by the Supreme Court in **M.C. Mehta** (supra).

16. In its recent judgment of **G.C. Manjunath & Others v. Seetaram**[9], the Supreme Court reiterated the legal position that when there is a reasonable nexus between the act complained of and the duties which a police officer is empowered or required to perform under the law, then a mere excess or overreach in the discharge of those official duties does not, by itself, strip the public servant of the statutory protection provided under Section 197 of the Cr.P.C. The relevant extract of the said judgement reads as under:

> **"33.** This Court in *Amod Kumar Kanth* v. *Association of Victim of Uphaar Tragedy*, (2023) 16 SCC 239 held that the State performs its obligations through its officers/public servants and every function performed by a public servant is ultimately aimed at achieving public welfare. Often, their roles involve a degree of discretion. But the exercise of such discretion cannot be separated from the circumstances and timing in which it is exercised or, in cases of omission, when the omission occurs. In such circumstances, the courts must address, whether the officer was acting in the discharge of official duties**. It was observed that even when an officer acts under the purported exercise of official powers, they are entitled to protection under Section 197 of the Cr.P.C.**. This protection exists for a valid reason so that the public servants can perform their duties fearlessly, without constant apprehension of legal action, as long as they act in good faith. While Section 197 of the Cr.P.C. does not explicitly mention the requirement of good faith, such a condition is implied and is expressly included in several other statutes that offer protection to public servants from civil and criminal liability.
>
> **34.** While dealing with the provisions of Section 197 of the Cr.P.C., read with Section 170 of the Police Act, this Court in ***D. Devaraja*** observed that not every offence committed by a police officer automatically gets this protection. The safeguard under Section 197 of the Cr.P.C. and Section 170 of the Police Act is limited. It applies only if the alleged act is reasonably connected to the officer's official duties. The law does not offer

[9] 2025 SCC OnLine SC 718

protection if the official role is used as a mere excuse to commit wrongful acts. However, it was held that the protection of prior sanction will be available when there is a reasonable connection between the act and their duty. **While enunciating when the protection of prior sanction will be applicable, this Court held that even if a police officer exceeds his official powers, as long as there is a reasonable connection between the act and his duty, they are still entitled to the protection requiring prior sanction. Excessiveness alone does not strip them of this safeguard.** The language of both Section 197 of the Cr.P.C. and Section 170 of the Police Act is clear that sanction is required not only for acts done in the discharge of official duty as well as for the acts purported to be done in the discharge of official duty and/or acts done "under colour of or in excess of such duty or authority". Sanction becomes mandatory if there is a reasonable connection between the act and the officer's official duties, even if the officer acted improperly or exceeded his authority. Therefore, if a complaint against a police officer involves actions reasonably related to his official role, the Court cannot take cognisance unless sanction from the appropriate Government has been obtained under Section 197 of the Cr.P.C. and Section 170 of the Police Act…."

…

36. In light of the aforesaid judgments, the guiding principle governing the necessity of prior sanction stands well crystallised. The pivotal inquiry is whether the impugned act is reasonably connected to the discharge of official duty. If the act is wholly unconnected or manifestly devoid of any nexus to the official functions of the public servant, the requirement of sanction is obviated. **Conversely, where there exists even a reasonable link between the act complained of and the official duties of the public servant, the protective umbrella of Section 197 of the Cr.P.C. and Section 170 of the Police Act is attracted**. In such cases, prior sanction assumes the character of a sine qua non, regardless of whether the public servant exceeded the scope of authority or acted improperly while discharging his duty.

37. Turning to the case at hand, there is little doubt that the allegations levelled against the accused persons are grave in nature. **Broadly classified, the accusations against the accused**

persons encompass the following: (1) abuse of official authority by the accused persons in allegedly implicating the complainant in fabricated criminal cases, purportedly driven by malice or vendetta; (2) physical assault and ill-treatment of the complainant by the accused persons, constituting acts of alleged police excess; (3) wrongful confinement of the complainant; and (4) criminal intimidation of the complainant.

38. In the circumstances at hand, we are of the considered opinion that the allegations levelled against the accused persons, though grave, squarely fall within the ambit of "acts done under colour of, or in excess of, such duty or authority," and "acting or purporting to act in the discharge of his official duty," as envisaged under Section 170 of the Police Act and Section 197 of the Cr.P.C. respectively. This Court, while adjudicating on instances of alleged police excess, has consistently held in **Virupaxappa and D. Devaraja**, that where a police officer, in the course of performing official duties, exceeds the bounds of such duty, the protective shield under the relevant statutory provisions continues to apply, provided there exists a reasonable nexus between the impugned act and the discharge of official functions. **It has been categorically held that transgression or overstepping of authority does not, by itself, suffice to displace the statutory safeguard of requiring prior government sanction before prosecuting the public servant concerned**.

39. In the present case, it is an admitted position that the complainant was declared a rowdy sheeter by the Deputy Commissioner of Police, Law and Order (West), Bengaluru City, pursuant to a request made by the Mahalakshmi Layout Police Station, Bengaluru, upon due consideration of the criminal cases registered against the complainant, vide order dated 23.08.1990. Subsequently, multiple criminal cases have been instituted against the complainant. It is in the course of the investigation of these cases that the instant allegations have been levelled against the accused persons. As noted above, any action undertaken by a

> public officer, even if in excess of the authority vested in them or overstepping the confines of their official duty, would nonetheless attract statutory protection, provided there exists a reasonable nexus between the act complained of and the officer's official functions.
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> 40. In the present case, it is evident that the actions attributed to the accused persons emanate from the discharge of their official duties, specifically in connection with the investigation of criminal cases pending against the complainant. As previously observed, a mere excess or overreach in the performance of official duty does not, by itself, disentitle a public servant from the statutory protection mandated by law. **The safeguard of obtaining prior sanction from the competent authority, as envisaged under Section 197 of the Cr.P.C. and Section 170 of the Police Act cannot be rendered nugatory merely because the acts alleged may have exceeded the strict bounds of official duty**. In view of the foregoing, we are of the considered opinion that the learned VII Additional Chief Metropolitan Magistrate erred in taking cognisance of the alleged offences against the accused persons without the requisite sanction for prosecution in the instant case. The absence of the necessary sanction vitiates the very initiation of criminal proceedings against the accused persons."
>
> (Emphasis Supplied)

17. The Petitioner has also contended that, based on an RTI response received from P.C. Chaturvedi, Deputy Commissioner (Enf./PCD), Transport Department, Delhi, the flying squads constituted under the supervision of SDMs pursuant to the Supreme Court's directions **in M.C. Mehta** (supra) ceased operations on 31.03.2001. Therefore, the Petitioner argues that Respondent No. 1 could not have impounded the vehicle as on 05.03.2005. In the considered opinion of this Court said argument is unsubstantiated. A plain reading of the RTI response reveals that it merely

states, "no deployment has been made after 31.03.2001." This does not imply that the traffic police officials ceased to have powers of impounding vested under Section 207 of the Motor Vehicles Act. As noted above, the power to impound vehicles exists in the statute even prior to the judgement of **M.C Mehta** (supra); however, it appears that the grounds on which the impounding could be carried out had been further elucidated in the said judgment. The said judgment is in force even as on date. Therefore, the Petitioner's contention lacks merit and does not establish that Respondent No. 1 ex-facie acted without authority of law.

18. In light of the discussion above and aforenoted judgements, having returned a finding that the action of Respondent No. 1 in issuing the challan on 05.03.2005 and impounding the Petitioner's bus was an act done in discharge of his official duty, the prior sanction under Section 197 Cr.P.C. is required to prosecute the Respondent No. 1 and consequently all other Respondents.

19. It is clarified that these findings are only with respect to the necessity to obtain prior sanction under Section 197 Cr.P.C. before prosecuting a criminal complaint.

Does the absence of a response from the appropriate authority to the Petitioner's sanction request constitutes deemed sanction?

20. The Petitioner states that on 08.06.2006, he applied to the Home Secretary, Government of India, seeking sanction against the Respondents in compliance with Section 197 Cr.P.C. However, no response was received from the Home Secretary's office.

20.1 The Petitioner argues that the absence of a response should be interpreted as deemed sanction. In support of this argument, the Petitioner relies on the Supreme Court's judgment in **Subramanian Swamy** (Supra),

wherein the Court suggested that Parliament should consider implementing a Rule whereby, if no decision on sanction is taken within the stipulated time, sanction should be deemed to have been granted, enabling the prosecuting agency or private complainant to proceed with filing the charge sheet or complaint within 15 days of the expiration of the time limit.

20.2 However, this Court notes that, in law as it stands today, there is no concept of "deemed sanction" under Section 197 Cr.P.C. The observations in the judgment relied upon by the Petitioner is a recommendation to Parliament, which remains a recommendation and has not resulted in a legislative amendment. This has been reiterated by Supreme Court in **Suneeti Toteja v. State of U.P. & Anr**[10] wherein the Court noted the judgment **Subramanian Swamy** (supra) and held that there is no concept of "deemed sanction" under Section 197 Cr.P.C. as per law as it stands today. The relevant extract of the said judgement reads as under:-

> 30. **The argument advanced by the respondent-State and the complainant with respect to "deemed sanction" is also not tenable. Section 197 of Cr.P.C. 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 Cr.P.C. 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**

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> 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.**
>
> (Emphasis Suppled)

21. Thus, the submission of the Petitioner that the Trial Court ought to have presumed there was a deemed sanction is misconceived.

22. Accordingly, there is no infirmity in the order dated 22.04.2017 of the Trial Court and the order dated 20.02.2018 of the Revision Court. The present petition is without any merits and the same is dismissed. Pending applications, if any, stands disposed of.

CRL.REV.P. 311/2018

23. The present criminal revision petition has been filed under Section 401 Cr.P.C. impugning the order dated 23.12.2017 passed by Special Judge, CBI-01, New Delhi District, Patiala House Courts, New Delhi in Criminal Complaint No.03/2017 (‘Trial Court’) dismissing the criminal complaint filed by the Petitioner under Section 200 Cr.P.C.

24. The brief facts relevant for adjudication of the present petition are as follow: The deceased Petitioner, who passed away on 23.01.2024 during the pendency of the present petition, was the owner of the commercial bus

bearing registration number DL-1PB-3581 and had STA permit for plying bus on the route Shahdara-Karol Bagh. It is stated that on 10.05.2006 when the bus was being plied at its designated route the said bus was challaned by ASI Parliament Street/Respondent no. 1, on the ground that it had violated the guidelines issued by the Supreme Court in **M.C Mehta** (supra) by stopping the bus at other than the designated bus stop and allowed passengers to onboard and deboard, in respect of which challan under section 66(1)/192A/177 of the Motor Vehicle Act and Section 7 of DMV Rules was issued. It is stated that the by the said challan, the bus of the Petitioner was impounded by Respondent No. 1 and was released on *Superdari* to the Petitioner on 11.05.2006.

24.1 It is stated that a criminal complaint under Section 200 Cr.P.C. was filed by the Petitioner before the learned Judicial Magistrate against the Respondent no. 1 for issuing challan, without authority of law and against the other Respondents for not taking action against Respondent no. 1. However, upon perusal of the complaint learned Judicial Magistrate found that allegations under Prevention of Corruption Act, 1988 ('P.C Act') were also made and, therefore, the concerned learned District and Session Judge transferred the complaint before the learned ASJ/Trial Court.

24.2 The learned ASJ/Trial Court, after examining the material on record, dismissed the complaint filed by the Petitioner against the Respondents. The Trial Court held that the complaint was directed against public servants for actions carried out in the discharge of their official duties, therefore, prior sanction under Section 197 of the Cr.P.C. and Section 19 of P.C Act was a pre-requisite for prosecution. As it was an admitted fact that no such sanction had been granted by the competent authority, the Respondents

could not be prosecuted, and the criminal complaint was consequently dismissed.

24.3 Aggrieved by the dismissal of the criminal complaint by the learned Trial Court petitioner has filed the present criminal revision petition before this Court.

Arguments of Petitioner/Mr. Ashwini

25. Learned counsel for the Petitioner states that no sanction under Section 197 Cr.P.C. or Section 19 of the P.C Act is required to prosecute the Respondents, in the facts of the present case as Respondents were in breach of their official duty as the challan dated 10.05.2006 was issued by the Respondent No. 1 in violation of the circular dated 06.10.2005 issued by DCP, Traffic HQ, Delhi[11] directing all the Traffic Inspectors not to challan and/or prosecute buses, which halt at red signal and allow passengers to on-board/de-board.

25.1 With respect to the issue of sanction, he stated that an application dated 08.08.2006 was made in this regard before the office of Home Secretary, Government of India, however, no response was received from the Home Secretary's office. It was only on 13.03.2014, that the Home Secretary's office issued a letter[12] informing the Petitioner that the application had been considered and that the matter had been closed. He stated that the said letter does not clarify whether sanction was granted or denied. He stated that the non-response from the Home Secretary's office should be deemed as deemed sanction.

26. Learned counsel of Petitioner adopted all other submissions made by him in CRL.M.C. 2892/2018.

[11] Annexure P-3
[12] Annexure P-5

Arguments of Respondent

27. Mr. Laksh Khanna, learned APP adopted the submissions made by him in CRL.M.C. 2892/2018 and the written submissions dated 16.12.2023 filed therein.

Analysis and Findings

28. In light of the findings in CRL.MC 2898/2018 vis-à-vis the mandatory requirement of sanction from the competent authority under Section 197 Cr.P.C., this Court finds no error in the impugned judgment of the Trial Court dated 23.12.2017. In the present case as well, the issuance of the challan by Respondent No. 1 was an act performed in the course of his official duties as a traffic police officer. The contention that this action may have contravened the circular dated 06.10.2005 issued by the DCP, Traffic HQ, Delhi does not by itself strip the Respondent No. 1 of the protection afforded under Section 197 Cr.P.C. because of the fact that even if the Respondent No. 1's conduct exceeded the scope of authority conferred upon him by challaning and impounding the vehicle of Petitioner, it still maintained a reasonable nexus with his official functions as a traffic police officer and as held by the Supreme Court in **Om Prakash Yadav**(supra) and **G.C. Manjunath** (supra), when an act is reasonably connected to the discharge of official duties, protection under Section 197 Cr.P.C. is applicable. Accordingly, Respondent No. 1 is entitled to such protection.

29. In addition, the effect of the letter dated 13.03.2014 is non-grant of sanction and this letter has not been challenged by the Petitioner.

30. Accordingly, the present petition is without any merits and the same is dismissed.

CRL.M.C. 3721/2022

31. The present petition has been filed under Section 482 Cr.P.C. impugning the order dated 10.03.2022 passed by the learned ASJ-03, Karkardooma Courts, East District, Delhi in Criminal Revision No. 07/2022, whereby the revision petition filed against the order dated 12.08.2021 passed by the Metropolitan Magistrate, Karkardooma Courts, East District, Delhi ('Trial Court') was dismissed.

The Trial Court vide order dated 12.08.2021 had dismissed Complaint Case No. 52619/2016 filed by the Petitioner.

32. The brief facts relevant for adjudication of the present petition are as follows:

The deceased Petitioner, who passed away on 23.01.2024 during the pendency of the present petition, was the registered owner of the commercial bus bearing registration number DL-1PB-3581 and had STA permit for plying bus on the route Shahdara-Karol Bagh. It is stated that on 14.06.2004, while the bus was operating on its designated route, it was intercepted and subsequently challaned and impounded by the Traffic Inspector, Gandhi Nagar Traffic Circle, Delhi /Respondent No. 2, on the allegation that they had violated the guidelines issued by the Supreme Court in **M.C Mehta** (supra), by overtaking another bus bearing registration number DL-1PA-7976 in respect of which challan No. AH644961 was issued under Section 66(1)/192A of the Motor Vehicles Act.

32.1 It is stated that vide order dated 15.06.2004, the learned Special Metropolitan Magistrate (Traffic), Karkardooma Courts, East District, Delhi, quashed the said challan and ordered discharge of the Petitioner's vehicle.

32.2 A criminal complaint under Section 200 Cr.P.C. was filed by the Petitioner against the impounding officer i.e., Respondent No. 2 and his

subordinate officers i.e., Respondent Nos. 3 and 4 on the ground that the challan was issued with malice and personal vendetta, as the Petitioner had earlier lodged complaints, including a legal notice dated 11.05.2004, against the impounding officer. The criminal complaint alleged commission of offences under Sections 167/218/420/465/466/471/120-B read with Section 34 of IPC. Though initially dismissed in 2011, the complaint was revived in appeal vide order dated 26.10.2012.

32.3 The learned Trial Court, after taking cognizance, issued summons to the Respondents vide order dated 06.12.2020. Thereafter, an application was filed by the Respondents seeking discharge on the ground that no prior sanction under Section 197 Cr.P.C. was obtained. The Trial Court, vide the impugned order dated 12.08.2021, allowed the said application and dismissed the complaint by holding that the Respondents were public servants and the acts complained of were performed in discharge of their official duties. Consequently, prior sanction under Section 197 Cr.P.C. was a necessary pre-condition for taking cognizance, and the Petitioner had failed to place any material on record to show that such sanction was obtained.

32.4 Aggrieved by the order dated 12.08.2021, the Petitioner preferred Criminal Revision Petition No. 07/2022 before the Court of Sessions. The learned ASJ, vide impugned order dated 10.03.2022, upheld the decision of the learned Trial Court and dismissed the Revision Petition.

32.5 Feeling aggrieved by the orders passed by the learned Trial Court and the learned ASJ, the Petitioner has filed the present petition under Section 482 Cr.P.C. invoking the inherent jurisdiction of this Hon'ble Court.

Analysis and Findings

33. In light of the findings in CRL.MC 2898/2018 vis-à-vis the mandatory requirement of sanction from the competent authority under

Section 197 Cr.P.C., this Court finds no error in the impugned judgment of the learned ASJ dated 10.03.2022 and learned Trial Court dated 12.08.2021. Similarly in the facts of this case, the action of Respondent no. 1 in issuing the impugned challan has a reasonable nexus with his official duties.

34. Accordingly, the present petition is without any merits and the same is dismissed.

MANMEET PRITAM SINGH ARORA
(JUDGE)

APRIL 22, 2025/mt/AKT/AKP

Click here to check corrigendum, if any