IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:08.05.2025

+ **CRL.M.C. 1840/2024**

ANIL DUTT SHARMA .....Petitioner

versus

STATE NCT OF DELHI & ANR. .....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Manoj Kumar Dwivedi & Ms. Shobha Siddhiki, Advs.

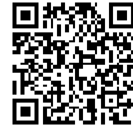
For the Respondent : Mr. Utkarsh, APP for the State

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed against the order dated 09.12.2023 (hereafter '**impugned order dated 09.12.2023**') passed by the learned Principal District and Sessions Judge ('**PDSJ**'), North East District, Karkardooma Courts in CR No. 185/2023 titled *Anil Dutt Sharma v. State & Anrs.* The petitioner also challenges the order dated 14.09.2023 (hereafter '**impugned order dated 14.09.2023**') passed by the learned Metropolitan Magistrate ('**MM**'), North East, Karkardooma Courts.

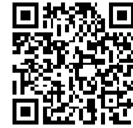
2. The learned PDSJ, by the impugned order dated 09.12.2023,



dismissed the revision petition filed by the petitioner, thereby upholding the impugned order dated 14.09.2023 whereby the application filed by the petitioner under Sections 156(3) and 200 of the Code of Criminal Procedure, 1973 (‘**CrPC**’) seeking registration of FIR, and summoning of three police officials, for the alleged offences under Sections 166 /166-A/ 167/ 177/ 182/ 193/ 196/ 211/ 217/ 218/ 500/ 506/ 120-B of the Indian Penal Code, 1860 (‘IPC’) had been dismissed.

3. The petitioner had filed a complaint under Section 200 of the Code of Criminal Procedure, 1973 (‘**CrPC**’) along with an application under Section 156(3) of the CrPC against certain public persons and police officials. It is the case of the petitioner that certain FIRs being FIR No. 1110/2014 and 1111/2014 had vexatiously been registered under Section 384 of the IPC against him thereby alleging that the petitioner, while representing himself as JE of the Municipal Corporation, had demanded protection money from the complainants in the respective FIRs on the pretext of non-demolition of the properties of the complainants.

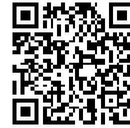
4. It is alleged that FIR No. 1110/2014 was registered on a false complaint given by one Ved Prakash/accused no. 1 and marked to SI Parvesh/accused No. 2 for investigation. Further, FIR No. 1111/2014 was registered on a complaint given by one Surender Kasana/accused No. 3, and marked for investigation to SI Gopi Chand/accused no. 4. It is the case of the petitioner that both the FIRs were registered on the same day in connivance with the then SHO/accused no. 5 of Police



Station Bhajanpura. It is stated that Accused Nos. 1 and 3 are property dealers and builders allegedly dealing with the business of unauthorized construction in collusion with the police and MCD officials. It is further alleged that accused nos. 2, 4-5 failed to conduct investigation against the petitioner in a proper manner. It is alleged that the FIRs were registered on the basis of false and concocted allegations. It is further the case of the petitioner that as many as 12 false FIRs were registered against him in different police stations on similar allegations.

5. The learned MM *vide* impugned order dated 14.09.2023 dismissed the application filed by the petitioner under Section 156(3) of the CrPC. In relation to three accused persons, the learned MM noted that they were police officials, and no previous sanction had been obtained by the petitioner. Consequently, the learned MM dismissed the application under Section 156(3) of the CrPC and the complaint under Section 200 of the CrPC against three police officials.

6. In regard to the other two accused persons, the learned MM dismissed the application filed by the petitioner under Section 156(3) of the CrPC noting that the petitioner was aware of the name and address of the proposed accused persons, and the entire evidence was within the reach of the petitioner at this stage. The learned MM, however, granted an opportunity to the petitioner to lead pre summoning evidence against the other two accused persons. The petitioner being essentially aggrieved by the dismissal of the application under Section 156(3) and the complaint under Section 200

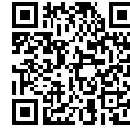


of the CrPC against the three police officials for want of sanction, preferred a revision petition.

7. The learned PDSJ *vide* impugned order dated 09.12.2023 dismissed the revision petition filed by the petitioner. The learned PDSJ noted that the power under Section 156(3) of the CrPC is discretionary in nature. It was noted that the complaint was made against three police officials and no sanction for prosecution against such police officials is detained. Consequently, the learned PDSJ dismissed the revision petition filed by the petitioner and upheld the impugned order dated 14.09.2023 whereby the application under Section 156(3) as well the complaint under Section 200 of the CrPC was dismissed.

8. The learned counsel for the petitioner submitted that the learned PDSJ erred in passing the impugned order dated 09.12.2023. He submitted that the police officials had failed to conduct the investigation in a proper manner. He submitted that since the police officials failed to discharge their duties in a proper manner, the protection under Section 197 of the CrPC is not available to them.

9. *Per Contra*, the learned Additional Public Prosecutor for the State vehemently opposed the petition and submitted that the acts attributed to the three police officials regarding improper conduction of investigation *qua* the petitioner and lodging of FIR, were performed by the police officials in their official capacity as a public servant. He consequently submitted that in the absence of prior sanction under Section 197 of the CrPC, no cognizance could be taken against the



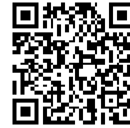
three police officials, and that the learned PDSJ rightly dismissed the complaint filed by the petitioner.

Analysis

10. The principal issue arising for determination is whether the learned PDSJ and the learned MM were justified in rejecting the petitioner's complaint at the pre-summoning stage in the absence of prior sanction under Section 197 of the CrPC.

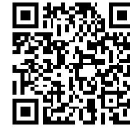
11. Before delving into the question of the correctness of the impugned order, it is pertinent to briefly examine Section 197 of the CrPC and Section 140 of the Delhi Police Act, 1978.

> *"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]— (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; (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 166-A, Section 166-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 370, Section 375, Section 376, [Section 376-A, Section 376-AB, Section 376-C,*



Section 376-D, Section 376-DA, Section 376-DB] 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.
[(3-A) 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.
(3-B) 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, 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."

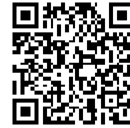
"140. Bar to suits and prosecution.—
(1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it



> *shall appear to the court that the offence or wrong if committed or done was of the character as aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of: Provided that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.*
> *(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrongdoer not less than one month's notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed.*
> *(3) The plaint shall set forth that the notice as aforesaid has been served on the defendant and the date of such service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof."*

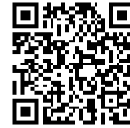
12. Upon a conjoint reading of Section 197 of the CrPC and Section 140 of the Delhi Police Act, 1978 it is evident that a prior sanction is required to prosecute the public servant/police officer but for certain exceptions provided in Section 197 of the CrPC. Further, the language materialised under Section 140 of the Delhi Police Act, 1978 makes it clear that sanction is required not only for acts done in discharge of official duty but also for acts done in excess of such duty. The purpose of necessitating a prior sanction to prosecute public servants finds its genesis in the need to safeguard public interest and to ensure that official acts do not result in vexatious prosecutions.

13. For this reason, the Hon'ble Apex Court in the case of ***State of Orissa v. Ganesh Chandra Jew :* (2004) 8 SCC 40** while delineating the scope of Section 197 of the CrPC noted that such acts that have a



reasonable nexus with the performance of official duty would not be deprived of protection. The relevant observations are reproduced as:

> *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.

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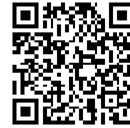
11. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is, under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in the course of his service 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 the course of service. Its operation has to be limited to those duties which are discharged in the 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 as 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 the 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 the course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted….”*

(emphasis supplied)

14. The same was reiterated by the Hon’ble Apex Court in the case of ***D. Devaraja v. Owais Sabeer Hussain*** **: (2020) 7 SCC 695** as under:

“68. ***If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the***



***policeman of the protection of the government sanction for initiation of criminal action against him**.*

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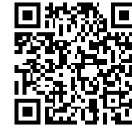
*70. **To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law**."*

(emphasis supplied)

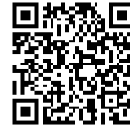
15. From a perusal of the complaint, it is borne out that the petitioner has alleged that the three police officials failed to carry out the investigation in a proper manner. The thrust of the case of the petitioner is that false FIRs were registered against him at the instance of builders, and that the police officials marked for investigation failed to take into account that the allegations made against the petitioner were false and that two FIRs being FIR Nos. 1110/2014 and 1111/2014 were vexatiously registered against the petitioner on similar allegations. It is further the case of the petitioner that since the police officials failed to conduct the investigation in a proper manner and failed to take into account that as many as 12 false FIRs were registered against the petitioner, the bail application preferred by the petitioner had been dismissed noting the involvement of the petitioner in other cases. It is consequently contended that sanction is not required for prosecution in the present case.

16. Recently, the Hon'ble Apex Court in the case of ***Indra Devi v. State of Rajasthan*** **: (2021) 8 SCC 768** while quashing an FIR against



a clerk alleged of conspiracy and forgery of documents observed as reproduced hereunder:

> *"10. We have given our thought to the submissions of the learned counsel for the parties. Section 197 CrPC seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognizance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. (See Subramanian Swamy v. Manmohan Singh [Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] .) The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. However, such sanction is necessary if the offence alleged against the public servant is committed by him "while acting or purporting to act in the discharge of his official duty" and in order to find out whether the alleged offence is committed "while acting or purporting to act in the discharge of his official duty", the yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. (See State of Maharashtra v. Budhikota Subbarao [State of Maharashtra v. Budhikota Subbarao, (1993) 3 SCC 339 : 1993 SCC (Cri) 901] .) The real question, therefore, is whether the act committed is directly concerned with the official duty.*
>
> *11. We have to apply the aforesaid test to the facts of the present case. In that behalf, the factum of Respondent 2 not being named in the FIR is not of much significance as the alleged role came to light later on. However, what is of significance is the role assigned to him in the alleged infraction i.e. conspiring with his superiors. What emerges therefrom is that insofar as the processing of the papers was concerned, Surendra Kumar Mathur, the Executive Officer, had put his initials to the relevant papers which was held in discharge of his official duties. Not only that, Sandeep Mathur, who was part of the alleged transaction, was also similarly granted protection. The work which was assigned to Respondent 2 pertained to the subject-matter of allotment, regularisation,*

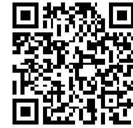


conversion of agricultural land and fell within his domain of work. In the processing of application of Megharam, the file was initially put up to the Executive Officer who directed the inspection and the inspection was carried out by the Junior Engineer and only thereafter the Municipal Commissioner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

12. We are, thus, not able to appreciate why a similar protection ought not to be granted to Respondent 2 as was done in the case of the other two officials by the trial court and High Court, respectively. The sanction from the competent authority would be required to take cognizance and no sanction had been obtained in respect of any of the officers. It is in view thereof that in respect of the other two officers, the proceedings were quashed and that is what the High Court has directed in the present case as well."

17. It is pertinent to note that the allegations against the three police officials proposed to be made accused is that the investigation was conducted by them in an improper manner. The allegations pertaining to improper conduction of investigation, by their very nature, have a reasonable nexus with the official duty of the police officials for which a sanction is required. It is further the case of the petitioner that the police officials while conducting the investigation failed to note that false FIRs were registered against the petitioner. Whether the allegations made against the petitioner were false or not is a subject matter of trial, and the said ground cannot be taken at the initial stage to contend that a sanction is not required for prosecution.

18. In that light, the learned PDSJ *vide* impugned order dated 09.12.2023 rightly dismissed the revision petition by observing that



the complaint was against three police officials and no sanction had been obtained under Section 197 of the CrPC.

19. In view of the above, this Court finds no infirmity in the impugned order, and the same cannot be faulted with.

20. The present petition is accordingly dismissed.

AMIT MAHAJAN, J

MAY 8, 2025