IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 06TH DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION NO.72 OF 2022

BETWEEN:

SMT.D.ROOPA

... PETITIONER

(BY SRI MADHUKAR DESHPANDE, ADVOCATE)

AND:

SRI H.N.SATHYANARAYANA RAO

... RESPONDENT

(BY SRI PUTTIGE R RAMESH, SR. ADVOCATE FOR
SMT LATHA RAMESH, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.2610/2020 (ANNEURE-A) ON THE FILE OF IX ADDL. C.M.M., BENGALURU; SET ASIDE THE ORDER DATED 22.10.2019

(ANNEXURE-A) TAKING COGNIZANCE OF THE OFFENCE P/U/S 499 AND 500 OF IPC IN C.C.NO.2610/2020 AND ETC.,

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.03.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question the proceedings in C.C.No.2610 of 2020 pending before the IX Additional Chief Metropolitan Magistrate, Bangalore, whereby the learned Magistrate takes cognizance for the offences punishable under Sections 357, 499 and 500 of the IPC.

2. Heard Sri.Madhukar Deshpande, learned counsel appearing for petitioner and Sri.Puttige.R.Ramesh, learned senior counsel appearing for the respondent.

3. Shorn of unnecessary details, facts in brief germane for consideration of the subject *lis* are as follows:-

The respondent/complainant is an officer of the Indian Police Service having retired on attaining the age of superannuation on 31.07.2017. The petitioner was posted as

Deputy Inspector General (DIG) Prisons in the Department of Prisons, Government of Karnataka. The petitioner and the respondent were in the same department and the petitioner was an officer of a rank below to that of the respondent. On 12.07.2017 the allegation is that the petitioner had made defamatory statement on the respondent by way of written words published in the media and had thereby committed offences punishable under Sections 357, 499 and 500 of the IPC. The contention of the respondent is that by the said words, the petitioner had tarnished the image of the respondent by giving wide publicity of the report which was communicated by the petitioner to the Head of the Department. The wide publicity alleged is for the reason print and visual media carried the said report.

4. On the basis of the aforesaid report dated 12-07-2017, the respondent registers a complaint invoking Section 200 of the Cr.P.C. for offences punishable under Sections 357, 499 and 500 of the IPC for defamation. After recording statements of

witnesses, the petitioner and the respondent, the learned Magistrate in terms of order dated 22-10-2019 takes cognizance and directs registration of criminal case against the petitioner and also issued summons against the accused/petitioner. It is at that juncture the petitioner has knocked the doors of this Court in the subject petition.

5. Heard Sri Madhukar Deshpande, learned counsel appearing for the petitioner and Sri Puttige R.Ramesh, learned Senior Counsel appearing for the respondent.

6. The learned counsel for the petitioner would urge the following contentions:

(a) That since the allegation that is made is performed during the course of conduct of official duty sanction under Section 197 of the Cr.P.C. is mandatory. Admittedly, there is no sanction in the case accorded to prosecute the petitioner and therefore, the entire proceedings would stand vitiated.

(b) The ingredients that are required to drive home Section 499 of the IPC are totally absent in the case at hand as the petitioner has communicated to the Head of the Department in the official capacity and there is no evidence that the petitioner has

communicated the same to the media both visual and print. Official communication of true facts or events cannot mean that they would be defamation of any officer much less the respondent.

(c) Section 199 of the Cr.P.C. permits only an aggrieved person to invoke Section 499 or Section 500 of the IPC. The complainant cannot be construed to be an aggrieved person.

In support of his contentions, he would place reliance on the following judgments:

(i) RAMNATH GOENKA v. A.R.RAJI – 1981 SCC OnLine Mad 107;

(ii) P.K. GHOSH AND ANOTHER v. SUKHBIR SHARMA – 2000(56) DRJ (Suppl) 87;

(iii) D.DEVARAJA v. OWAIS SABEEN HUSSAIN - (2020) 7 SCC 695;

(iv) RAJESH RANGARAJAN v. CROP CARE FEDERATION OF INDIA AND ANOTHER – (2010) 15 SCC 163.

7. On the other hand, the learned senior Counsel representing the respondent would submit that the petitioner was, on the date of lodging of the complaint, holding a different post and, therefore, no sanction is required to prosecute the petitioner. The incident that has led to the alleged defamation is

not referable to any public work that was discharged by the petitioner and, therefore, protection under Section 199(2) of the Cr.P.C. is not available. He would submit that the communication is sent by the petitioner to the head of the Department as also to both print and visual media and as such, it is a matter of trial for the petitioner to come out clean in the proceedings. The learned senior counsel would place reliance upon the following judgments:

(i) PARKASH SINGH BADAL AND ANOTHER v. STATE OF PUNJAB AND OTHERS – (2007) 1 SCC 1;

(ii) L.NARAYANA SWAMY v. STATE OF KARNATAKA AND OTHRES – (2016) 9 SCC 598;

(iii) AMRIK SINGH v. STATE OF PEPSU – AIR 1955 SC 309;

(iv) SUBRAMANIAN SWAMY v. MANMOHAN SINGH AND ANOTHER – (2012) 3 SCC 64;

(v) URMILA DEVI v. YUDHVIR SINGH – (2013) 15 SCC 624;

(vi) RAJIB RANJAN AND OTHERS v. R.VIJAYKUMAR – (2015) 1 SCC 513;

(vii) K.K.MISHRA v. STATE OF MADHYA PRADESH AND ANOTHER – (2018)6 SCC 676;

(viii) MEHMOOD NAYYAR AZAM v. STATE OF CHHATTISGARH AND OTHERS – (2012) 8 SCC 1.

8. I have given my anxious consideration to the submissions of the learned counsel appearing for the petitioner and the learned senior counsel for the respondent and perused the material on record. In furtherance whereof, the following issues fall for my consideration:

(i) Whether proceedings instituted for offences punishable under Sections 499 and 500 of the IPC for defamation would be rendered illegal for want of sanction under Section 197 of the Cr.P.C.?

(ii) Whether the alleged communication/report dated 12-07-2017 amounts to defamation within the meaning of ingredients of Section 499 of the IPC against the petitioner?

9. **Issue No.1:**

(i) Whether proceedings instituted for offences punishable under Sections 499 and 500 of the IPC for defamation would be rendered illegal for want of sanction under Section 197 of the Cr.P.C.?

The petitioner and the respondent are feathers of the same department. Prior to the entry of the petitioner as DIG, Prisons, the respondent was working as DGP & Inspector General (Prisons). The petitioner while working as DIG (Prisons) conducted a review about functioning of prison on 12.07.2017. The outcome of review was a communication to the DGP & Inspector General (Prisons) in the form a report. The report is about continued irregularities in the Prison. The narration contains the inspection conducted by the petitioner from time to time. Since the entire issue revolves around the communication dated 12-07-2017 the same is quoted herein for the purpose of ready reference:

"ವಿಷಯ: ಬೆಂಗಳೂರು ಸೆಂಟ್ರಲ್ ಜೈಲ್‌ನಲ್ಲಿ ಅವ್ಯಾಹತವಾಗಿ ನಡೆಯುತ್ತಿರುವ ಅವ್ಯವಹಾರಗಳ ಬಗ್ಗೆ ವರದಿ.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ದಿನಂಕ: 29–06–2017 ರಂದು ಸೆಂಟ್ರಲ್ ಜೈಲಿನ ಮುಖ್ಯ ವೈದ್ಯಾಧಿಕಾರಿಗಳು ಹಾಗೂ ನಾಲ್ಕು ಜನ ವೈದ್ಯರು ಸೇರಿದಂತೆ ಒಟ್ಟು 10 ಜನ ವೈದ್ಯಕೀಯ

ಸಿಬ್ಬಂದಿಗಳು ಅವರ ಮೇಲೆ ಸಜಾ ಬಂದಿಯಿಂದ ಆದ ಹಲ್ಲೆಯ ಬಗ್ಗೆ ವಿವರವಾದ ವರದಿಯನ್ನು ತಮಗೂ ಹಾಗೂ ನನಗೆ ಫ್ಯಾಕ್ಸ್ ಮೂಲಕ ಕಳುಹಿಸಿರುತ್ತಾರೆ. (ಲಗತ್ತಿಸಿದೆ)

ಈ ಕುರಿತು ಸವಿವರವಾದ ವರದಿಯನ್ನು ಕಳುಹಿಸಿಕೊಡಲು ನಾನು ಸೆಂಟ್ರಲ್ ಜೈಲಿನ ಮುಖ್ಯ ಅಧೀಕ್ಷಕರಿಗೆ ಕಳುಹಿಸಿಕೊಡುವಂತೆ ಪತ್ರದ ಮುಖೇನ ಸೂಚಿರುತ್ತೇನೆ. ಆದರೆ ಈ ಘಟನೆ ದಿನಾಂಕ: 29–06–2017ಕ್ಕೆ ನಡೆದಿದ್ದು, ಘಟನೆಯಲ್ಲಿ ಯಾರ ತಪ್ಪು, ಅವರ ಮೇಲೆ ಯಾವ ಶಿಸ್ತುಕ್ರಮ ತೆಗೆದುಕೊಂಡಿರುತ್ತಾರೆ ಎಂಬ ಬಗ್ಗೆ ಸೆಂಟ್ರಲ್ ಜೈಲಿನ ಮುಖ್ಯ ಅಧೀಕ್ಷಕರಿಂದ ಇಂದಿವರೆಗೂ ವರದಿ ಬಂದಿರುವುದಿಲ್ಲ.

ಹಾಗಾಗಿ ನಾನು ದಿನಾಂಕ: 10–07–2017 ರಂದು ಖುದ್ದಾಗಿ ಅಲ್ಲಿರುವ ವಿಷಯಗಳನ್ನು ತಿಳಿದುಕೊಳ್ಳಲು ಸೆಂಟ್ರಲ್ ಜೈಲಿಗೆ ಬೆಳಿಗ್ಗೆ ಭೇಟಿಕೊಟ್ಟು ಸಂಜೆ 06–30 ರವರೆಗೆ ಅಲ್ಲಿದ್ದು, ನಂತರ ಜೈಲಿನಿಂದ ಹೊರ ಹೊರಟಿರುತ್ತೇನೆ. ಈ ಸಮಯದಲ್ಲಿ ಮುಖ್ಯ ಅಧೀಕ್ಷಕರು ಜೈಲಿನಲ್ಲಿ ಕರ್ತವ್ಯದಲ್ಲಿ ಹಾಜರಿರುವುದಿಲ್ಲ. ಅವರು ಎಲ್ಲಿ ಎಂದು ಸಿಬ್ಬಂದಿಯನ್ನು ಕೇಳಿದ್ದಕ್ಕೆ ಬಹುಶಃ ಕುಣಿಕಲ್ ಕೋರ್ಟ್‌ಗೆ ಹೋಗಿರಬಹುದೆಂದು ಹೇಳಿರುತ್ತಾರೆ. ಮುಖ್ಯ ಅಧೀಕ್ಷಕರು ಫೋನ್ ಮುಖಾಂತರ ತಮ್ಮ ಗೈರು ಹಾಜರಿಯ ಬಗ್ಗೆ ನನಗೆ ತಿಳಿಸಬಹುದಿತ್ತು. ಆದರೆ ತಿಳಿಸಿರುವುದಿಲ್ಲ. ಸಂಜೆ 06–30 ವರೆಗೆ ನಾನು ಜೈಲಿನಲ್ಲಿಯೇ ಹಾಜರಿದ್ದರೂ, ಸಮೀಪದಲ್ಲಿಯೇ ಇರುವ ಕುಣಿಗಲ್ ಕೋರ್ಟ್ ಕೆಲಸ ಮುಗಿಸಿ ಬಂದು ಭೇಟಿ ಮಾಡಬಹುದಿತ್ತು. ಆದರೆ ಹಾಗೆ ಮಾಡದೆ ಅತಿಸ್ತು ಪ್ರದರ್ಶಿಸಿರುತ್ತಾರೆ.

ದಿನಾಂಕ: 10–07–2017 ರಂದು ನಾನು ಬೆಂಗಳೂರು ಸೆಂಟ್ರಲ್ ಜೈಲಿನಲ್ಲಿ ವಿಚಾರಣೆ ನಡೆಸಿದಾಗ ಈ ಕೆಳಕಂಡ ಅಂಶಗಳು ನನ್ನ ಗಮನಕ್ಕೆ ಬಂದಿರುತ್ತವೆ.

1. ದಿನಾಂಕ: 29–06–2017 ರಂದು ಮಧ್ಯಾಹ್ನ 02–40 ಕ್ಕೆ ಸಜಾ ಬಂದಿ ಸಂಖ್ಯೆ 4755 ನಾಗೇಂದ್ರ ಮೂರ್ತಿ ಎಂಬುವವನು ಜೈಲಿನ ಆಸ್ಪತ್ರೆಗೆ ಬಂದು ಮುಖ್ಯ ವೈದ್ಯಾಧಿಕಾರಿಗಳಿಗೆ ಅಲ್ಲಯೆ ಇದ್ದ ಕಬ್ಬಿಣದ ಕುರ್ಚಿ ಎತ್ತಿ ಹೊಡೆಯಲು ಯತ್ನಿಸಿದಲ್ಲದೆ ಅವರ ರೂಂನ ಚಿಲಕ ಹಾಕಿ, ಅವರ ಮೇಲೆ ಹಲ್ಲೆ ಮಾಡಲು ಪ್ರಯತ್ನಿಸಿರುತ್ತಾನೆ. ನಂತರ ಅಲ್ಲಿದ್ದ ಮನೋರೋಗಿಯೊಬ್ಬ ಆ ಸಜಾ ಬಂದಿಯನ್ನು ತಡೆದು ಹೆಚ್ಚಿನ ಅನಾಹುತ ಆಗುವುದನ್ನು ತಪ್ಪಿಸಿರುತ್ತಾನೆ. ಇದರಿಂದ ವೈದ್ಯರೆಲ್ಲರೂ ಭಯಗ್ರಸ್ಥರಾಗಿರುತ್ತಾರೆ. ಈ ಘಟನೆಯ ವೇಳೆಗೆ ಅಲ್ಲಿ ನೇಮಿಸಿದ್ದ ಗಾರ್ಡ್ ಗೈರು ಹಾಜರಾಗಿದ್ದು, ಅವರ ಮೇಲೆ ಯಾವುದೇ ಶಿಸ್ತುಕ್ರಮವನ್ನು ತೆಗೆದುಕೊಂಡಿರುವುದಿಲ್ಲ.

2. ಜೈಲಿನಲ್ಲಿ ಗಾಂಜ ವ್ಯಾಪಕವಾಗಿ ಉಪಯೋಗಿಸುತ್ತಾರೆ ಎಂಬ ಮಾಹಿತಿ ನನಗಿದ್ದು, ಇದರ ಬಗ್ಗೆ ಸತ್ಯಾಸತ್ಯತೆ ತಿಳಿಯಲು ದಿನಾಂಕ: 10–07–2017 ರಂದು Drug test Kit ಬಳಸಿ ಮೊಟ್ಟ ಮೊದಲನೆ ಬಾರಿಗೆ ಅಂದಿನ ದಿನ 25 ಜನರಿಗೆ ಡ್ರಗ್ಸ್ ಟೆಸ್ಟ್ ಮೂತ್ರ ಪರೀಕ್ಷೆ ಮಾಡಿಸಿರುತ್ತೇನೆ. ಅದರಲ್ಲಿ ಕಂಡು ಬಂದ ಆಘಾತಕಾರಿ ವಿಷಯವೆಂದರೆ 25 ಜನರಲ್ಲಿ 18 ಜನರಿಗೆ ಗಾಂಜ ಪಾಸಿಟಿವ್ ಇರುತ್ತದೆ ಎಂದು ವೈದ್ಯಾಧಿಕಾರಿಗಳಿಂದ ವರದಿ ಬಂದಿದೆ.

Name of the Prisoner detected to be using substance (Drug Abuse) by Laboratory Reports

Sl. No.	Name	UTP/CTP No.	Drug Details
1.	Saleem	UTP – 1343	Cannabis (Ganja)
2.	Nelson	UTP - 13476	Cannabis (Ganja)
3.	Santu @ Santhosh Pujari	UTP –ENR – 2436	Cannabis (Ganja)

4.	*Rizwan Beig*	*UTP – 9764*	*Cannabis (Ganja)*
5.	*Ganesh*	*CTP – 3410*	*Cannabis (Ganja)*
6.	*Syed Hussain*	*UTP - 5909*	*Cannabis (Ganja) Benzodiazepine*
7.	*Anand Kumar*	*CTP-1489*	*Cannabis (Ganja)*
8.	*Aswathappa*	*UTP-ENR-7498*	*Cannabis (Ganja)*
9.	*Paveen Kumar*	*CTP-7827*	*Barbiturates*
10.	*Nagaraj*	*CTP-3786*	*Cannabis (Ganja)*
11.	*Shabab*	*CTP-1220*	*Benzodiazepine Barbiturates, Morphine*
12.	*Pavan*	*UTP – 840*	*Cannabis (Ganja)*
13.	*Ramachandra*	*UTP - 4372*	*Cannabis (Ganja)*
14.	*Mani*	*UTP - 1562*	*Cannabis (Ganja)*
15.	*William Anthony raj*	*UTP – 13666*	*Benzodiazepine*
16.	*Murali*	*UTP - 2235*	*Cannabis (Ganja)*
17.	*Praveen*	*CTP – ENR – 2406*	*Cannabis (Ganja)*
18.	*Salman Pasha*	*CTP – ENR - 2449*	*Benzodiazepine*

ಕೈದಿಗಳಿಗೆ ಗಾಂಜಾ ಸರಬರಾಜು ನಿತ್ಯ ಆಗುತ್ತಿದ್ದು, ಅದನ್ನು ತಡೆಗಟ್ಟಲು ಯಾವುದೇ ಕ್ರಮ ಕೈಗೊಂಡಿರುವುದಿಲ್ಲ.

3. ನಾಲ್ಕು ತಿಂಗಳ ಹಿಂದೆ (ನಾನು ಈ ಹುದ್ದೆಯ ಪದಗ್ರಹಣ 23–06–2017 ಮಾಡಿದ್ದು, ಅದಕ್ಕೂ ಮುಂಚೆ ನಡೆದ ಘಟನೆ) ಒಬ್ಬ ಮಹಿಳಾ ನರ್ಸ್‌ನ ಕೈಹಿಡಿದು ವಿಚಾರಣಾ ಬಂದಿಯು ಅಸಭ್ಯವಾಗಿ ವರ್ತಿಸಿದ್ದರೂ, ಅದಕ್ಕೆ ಯಾವುದೇ ಶಿಸ್ತು ಕ್ರಮ ಆಗಿರುವುದಿಲ್ಲ.

4. ಕಾರಾಗೃಹ ಆಸ್ಪತ್ರೆಯಲ್ಲಿ ರೆಕಾರ್ಡ್ ರೂಂ ಎಂಬುದಿದ್ದು, ಕೈದಿಗಳ ವೈದ್ಯಕೀಯ ದಾಖಲೆಗಳನ್ನು ಅಲ್ಲಿ ಇಟ್ಟಿದ್ದು, ಅನೇಕ ಬಾರಿ ಕೋರ್ಟ್‌ಗಳಿಗೆ ಈ ದಾಖಲೆಗಳನ್ನು ಹಾಜರುಪಡಿಸಬೇಕಾಗುತ್ತದೆ ಈ ರೆಕಾರ್ಡ್ ರೂಂನ ನಿರ್ವಹಣೆಗಾಗಿ ವೈದ್ಯಾಧಿಕಾರಿಗಳಿಗೆ ಸಹಾಯ ಮಾಡಲು ಜವಾಬ್ದಾರಿಯುತ ಸರ್ಕಾರಿ ನೌಕರರಾದ ವಾರ್ಡರ್‌ಗಳನ್ನು ನೇಮಿಸಬೇಕಿತ್ತು. ಆದರೆ ಹಾಗೆ ಮಾಡದೆ ಸಿಬ್ಬಂದಿ ಕೊರತೆ ಎಂಬ ಕ್ಷುಲಕ ನೆಪಹೇಳಿ ಸಜಾ ಬಂಧಿಗಳನ್ನೆ (Convicts) ನಿರ್ವಹಣೆಗಾಗಿ ನೇಮಿಸಲಾಗಿದೆ. ಇದರಿಂದ ಅನೇಕ ಬಾರಿ ಕೋರ್ಟ್‌ಗೆ ನೀಡಬೇಕಾದ ದಾಖಲೆಗಳು ಕಾಣೆಯಾಗಿವೆ. ಅಲ್ಲದೆ ವೈದಾಧಿಕಾರಿಗಳ ಗಮನಕ್ಕೆ ಬಾರದೆ ದಾಖಲೆಗಳನ್ನು ಬೇಲ್ (Bail) ಸಲುವಾಗಿ ಹೊರಗೆ ಸಾಗಿಸಿ ದುರುಪಯೋಗ ಮಾಡಲಾಗುತ್ತಿದೆ.

5. ಕೈದಿಗಳು ತಮಗೇನೂ ಆರೋಗ್ಯದ ಸಮಸ್ಯೆ ಇಲ್ಲದಿದ್ದರೂ ವೈದರ ಬಳಿ ಬಂದು "ಜೈಲಿನ ಹೊರಗಿರುವ ಆಸ್ಪತ್ರೆಯಲ್ಲಿ ದಾಖಲಾಗಲು ಅನುಕೂಲವಾಗುವಂತೆ ವರದಿ ಕೊಡಿ" ಎಂದು ವೈದ್ಯರ ಮೇಲೆ ಒತ್ತಡ ಹೇರುವುದಲ್ಲದೆ ಅವರ ಬೇಡಿಕೆಗೆ ಅನುಸಾರವಾಗಿ ನಡೆದುಕೊಳ್ಳದಿದ್ದರೆ ಜೀವ ಸಹಿತ ಬಿಡುವುದಿಲ್ಲವೆಂದು ಬೆದರಿಕೆ ಹಾಕಿರುತ್ತಾರೆ.

6. ಆಸ್ಪತ್ರೆಯ ಫಾರ್ಮಸಿಯ ನಿರ್ವಹಣೆಗಾಗಿ ಕೂಡ ಸಜಾ ಬಂದಿಗಳನ್ನೇ ನೇಮಿಸಿರುವುದರಿಂದ ಅಲ್ಲಿ ಕೆಲವು ಮನೋರೋಗಿಗಳ ಚಿಕಿತ್ಸೆಗೆ ಬಳಸುವ ನಿದ್ರೆ ಮಾತ್ರೆಗಳನ್ನು ಸಾಮಾನ್ಯ ರೋಗಿಗಳ ಕೈಗೆ ಸಿಗುವ ಹಾಗೆ ದುರುಪಯೋಗ ಮಾಡಲಾಗುತ್ತಿದೆ.

7. ಸ್ಟ್ಯಾಂಪ್ ಪೇಪರ್ ಹಗರಣದ ಮುಖ್ಯ ಆರೋಪಿ ಅಬ್ದುಲ್ ಕರಿಂಲಾಲ್ ತೆಲಗಿ ಈತನು 06 ತಿಂಗಳ ಹಿಂದೆ ವೀಲ್ ಚೇರ್ ಉಪಯೋಗಿಸುತ್ತಿದ್ದಾಗ ಸಹಾಯಕರನ್ನು ಕೊಡಬಹುದೆಂದು ಕೋರ್ಟ್ ಆದೇಶವಿತ್ತು. ಆದರೆ ಈಗ ಆತನು ವೀಲ್ ಚೇರ್ ಬಳಸದೆ ಚೆನ್ನಾಗಿ ಓಡಾಡಿಕೊಂಡಿರುತ್ತಾನೆ. ಆದರೂ ಸಹ ಆತನ ಕೋಣೆಯಲ್ಲಿ ಕನಿಷ್ಟ 3 ರಿಂದ 4 ಜನ ವಿಚಾರಣಾ ಕೈದಿಗಳು ಹಾಜರಿದ್ದು, ಆತನಿಗೆ ಕಾಲು ಒತ್ತುವುದು, ಕೈ ಒತ್ತುವುದು, ಭುಜ ಒತ್ತುವುದು ಇತ್ಯಾದಿ ಮಾಡುತ್ತಿರುತ್ತಾರೆ. ಇದನ್ನು ನೀವೂ ಕೂಡ ನಿಮ್ಮ ಛೇಂಬರ್‌ನಲ್ಲಿಯೇ ಇರುವ ಸಿಸಿಟಿವಿಯಲ್ಲಿ ನೋಡಿರುತ್ತೀರೆಂದು ಭಾವಿಸಿರುತ್ತೇನೆ. ವಿಚಾರಣಾಧೀನ ಕೈದಿಗಳು (Undertrial Prisoners) ಗಳನ್ನು ತೆಲಗಿಯಂತಹ ಸಜಾ ಬಂದಿ (Convicts) ಜೊತೆಗೆ ಬೆರೆಯಲು ಬಿಟ್ಟರೆ ಕಾರಾಗೃಹ ನಿಯಮಗಳ ಉಲ್ಲಂಘನೆ ಎಂದು ಸೆಂಟ್ರಲ್ ಜೈಲಿನ ಮುಖ್ಯ ಅಧೀಕ್ಷರಿಗೆ ಗೊತ್ತಿದ್ದರೂ ಕ್ರಮ ಕೈಗೊಂಡಿರುವುದಿಲ್ಲ. ನಾನು ಈ ಕುರಿತು ಇದನ್ನು ಸರಿಪಡಿಸಬೇಕೆಂದು ಸೂಚಿಸಿದ್ದರೂ ಅದನ್ನೆ ಮುಂದುವರೆಸಿರುತ್ತಾರೆ. ಆತನು ಚೆನ್ನಾಗಿ ಈಗ ಓಡಾಡಿಕೊಂಡಿರುವುದರಿಂದ ಕೋರ್ಟ್‌ಗೆ ಮಾಹಿತಿ ನೀಡಿ ಸಹಾಯಕ ಕೈದಿಗಳನ್ನು ತೆಲಗಿಯಿಂದ ಹಿಂಪಡೆಯಬೇಕು ಎಂದು ನಾನು ಈ ಹುದ್ದೆ ಅಲಂಕರಿಸಿದ ಕಳೆದ 20 ದಿನಗಳಲ್ಲಿ ಅನೇಕ ಬಾರಿ ಸೂಚಿಸಿದ್ದರೂ ಸೂಕ್ತವಾದ ಕ್ರಮವನ್ನು ಕೈಗೊಂಡಿರುವುದಿಲ್ಲ.

8. Disproportionate Assets ಕೇಸ್‌ನಲ್ಲಿ ಸಜೆ ಅನುಭವಿಸುತ್ತಿರುವ ತಮಿಳುನಾಡಿನ ಹಿಂದಿನ ಮುಖ್ಯ ಮಂತ್ರಿಯ ಆಪ್ತೆಯಾದ ಶಶಿಕಲಾಗೆ ಆಕೆಗೆಂದೇ ವಿಶೇಷವಾಗಿ ಅಡುಗೆ ಕೋಣೆ ಕಲ್ಪಿಸಲಾಗಿದ್ದು, ಕಾರಾಗೃಹ ಕಾಯ್ದೆ ಹಾಗೂ ನಿಯಮಗಳ ಉಲ್ಲಂಘನೆಯಾಗಿರುತ್ತದೆ. ಈ ವಿಷಯ ತಮ್ಮ ಗಮನಕ್ಕೆ ಇದ್ದು, ಇದನ್ನು ಮುಂದುವರಿಸಲಾಗಿದೆ ಎಂಬ ಉಹಾಪೋಹ ಇದ್ದು, ಈ ಕಾರ್ಯಕ್ಕೆ ಎರಡು ಕೋಟಿ ಹಣ ಲಂಚ ಕೊಡಲಾಗಿದೆ ಎಂಬ ಮಾತಿದ್ದು, ಈ ಅಪಾದನೆಗಳು ದುರದುಷ್ಟಕರವಾಗಿ ತಮ್ಮ ಮೇಲೆ ಇರುವುದರಿಂದ ತಾವು ಇದರ ಬಗ್ಗೆ ಗಮನ ಹರಿಸಿ ಕೂಡಲೇ ಜೈಲಿನ ತಪ್ಪಿತಸ್ಥ ಅಧಿಕಾರಿ/ಸಿಬ್ಬಂದಿಯವರ ಮೇಲೆ ನಿರ್ಧಾಕ್ಷಣ್ಯವಾಗಿ ಕಠಿಣ ಶಿಸ್ತುಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳಲು ಕೋರಿದೆ.

9. ನಾನು ದಿನಾಂಕ: 23–06–2017 ರಂದು ಈ ಹುದ್ದೆ ಅಲಂಕರಿಸಿದಾಗಿನಿಂದಲೂ ತಾವು ನನ್ನ ಕರ್ತವ್ಯದಲ್ಲಿ ಹಸ್ತಕ್ಷೇಪ ಮಾಡುತ್ತಾ ಬಂದಿರುತ್ತೀರಿ. ದಿನಾಂಕ: 11–07–2017 ರಂದು ತಮ್ಮ ಕಛೇರಿಯ ಪತ್ರ ಸಂಖ್ಯೆ:ಡಿಜಿಪಿ.ಪಿಆರ್‌ಐ:ಎಂ–18:2017 ಮೂಲಕ ನಾನು ಅದರ ಹಿಂದಿನ ದಿನ ಅಂದರೆ ದಿನಾಂಕ: 10–07–2017ರಂದು ಸೆಂಟ್ರಲ್ ಜೈಲ್ ಬೆಂಗಳೂರಿಗೆ ಹೋದದನ್ನು ಪ್ರಶ್ನಿಸಿ ಯಾಕೆ ಹೋಗಿರುತ್ತೀರೆಂದು ನನ್ನಿಂದ ವಿವರಣೆ ಕೇಳಿ ಜ್ಞಾಪನಾ ಪತ್ರ ಕೊಟ್ಟಿರುತ್ತೀರಿ. ಡಿಐಜಿ ಪ್ರಿಸನ್ಸ ಆದ ನನಗಿರುವ ಕಾರ್ಯವ್ಯಾಪ್ತಿಯಲ್ಲಿ ಸೆಂಟ್ರಲ್ ಜೈಲ್‌ಗೆ ಭೇಟಿಕೊಟ್ಟು ವಿಚಾರಣೆ, ಮೇಲ್ವಿಚಾರಣೆ ನಡೆಸುವ ಅಧಿಕಾರ ಕಾನೂನು ಪ್ರಕಾರ ಇದ್ದರೂ ತಾವು ಈ ರೀತಿಯ ಜ್ಞಾಪನಾ ಕೊಟ್ಟಿರುವುದು ಕಾರಾಗೃಹದ ಆಡಳಿತವು ಅತ್ಯಂತ ಕೆಳಸ್ಥರ ತಲುಪಿದೆ ಎಂದು ಹೇಳಲು ಶೋಚನೀಯವೆನಿಸುತ್ತದೆ.

ಆದ್ಯಾಗಿಯೂ ಮೇಲೆ ಹೇಳಿದ ಎಲ್ಲಾ ಆರೋಪಗಳು ಅತೀ ಗಂಭೀರವಾಗಿರುವುದರಿಂದ ಹಾಗೂ ತಮ್ಮ ಮೇಲಿರುವ ಅಪಾದನೆಗಳಿಂದಲೂ ತಾವು ಮುಕ್ತರಾಗಲು ತಪ್ಪಿತಸ್ಥರ ಮೇಲೆ ಕಠಿಣ ಶಿಸ್ತುಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳಬೇಕೆಂದು ವಿನಂತಿಸುತ್ತೇನೆ.

ಲಗತ್ತು:

ಮುಖ್ಯ ವೈದ್ಯಾಧಿಕಾರಿಗಳು ಹಾಗೂ ಒಟ್ಟು
10 ಜನ ಆಸ್ಪತ್ರೆ ವೈದ್ಯರು/ಸಿಬ್ಬಂದಿ ಸಹಿಯೊಂದಿಗೆ
ದಿನಾಂಕ: 29–06–2017 ರಂದು ಕಳುಹಿಸಿಕೊಟ್ಟಿರುವ
ವರದಿ ಒಟ್ಟು ಪುಟಗಳು 6

ತಮ್ಮ ವಿಶ್ವಾಸಿ,

ಸಹಿ/–
ಡಿ.ರೂಪ, ಐ.ಪಿ.ಎಸ್.,
ಪೊಲೀಸ್ ಉಪ ಮಹಾನಿರೀಕ್ಷಕರು (ಕಾರಾಗೃಹ)"

The narration brings about some grave aspects of illegalities happening in the Prison and also suggested corrective measures that need to be taken. While saying so, it was also noted that there were some allegations against the respondent that also needs to be looked into and stringent action be taken against those who are making such allegations against the respondent.

10. The communication is not sent to any other person, as could be seen from the communication itself. It is a simple communication from the petitioner to the respondent who is the Head of Prisons. It would have been a circumstance altogether different if the communication had been made to any other quarter in the Department, Government, print or Visual media. It transpires that newspapers next day carried the report and even the visual media. It is after the publication came about, the

respondent retired from service on 31-07-2017 on attaining the age of superannuation. On his retirement, he registers the impugned private complaint against the petitioner alleging that the act of the petitioner in communicating the report and the same being published in both print and visual media has defamed him. The alleged defamatory part of the communication is what is highlighted in the afore-quoted report dated 12.07.2017. On the registration of the private complaint, recording of sworn statement took place and the learned Magistrate takes cognizance of the offence punishable under Sections 357, 499 and 500 of the IPC against the petitioner. It is at that juncture the petitioner has knocked the doors of this Court.

11. It is not, cannot be in dispute that the report communicated by the petitioner to the respondent was in the official capacity. The narration in the report is a blend of inspection taken up by the petitioner from time to time in the official capacity. Therefore, the entire act revolves around the

official duties and on the official capacity of the petitioner. If any act being done by a public servant in the official capacity is to be alleged to have a colour of crime and criminal law is to be set in motion, on such allegations sanction for setting such criminal law in motion in terms of Section 197 is imperative. Sub-section (1) of Section 197 of the Cr.P.C. reads as follows:

> ***"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 (1 of 2014)—***
>
> *(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 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376D or section 509 of the Indian Penal Code (45 of 1860)."*

(Emphasis supplied)

Section 197 of the Cr.P.C. which deals with prosecution of public servants mandates that no Court shall take cognizance of the offence except with the previous sanction of the Competent Authority.

12. It is an admitted fact that the Court has taken cognizance of the offence against the petitioner for offences punishable under Sections 357, 499 and 500 of the IPC. Without doubt, they are offences punishable under the Code and the Court could not have taken cognizance without an order of sanction from the hands of the Competent Authority being placed before the Court. There could have been no question of

further proceedings being taken up without an order of sanction. Several Constitutional Courts have, while considering a case that is instituted for the offence punishable under Section 499 or 500 of the IPC which deals with defamation have so interpreted that sanction under Section 197 of the Cr.P.C. is imperative. If the kernel of the article or letter alleging defamation is seen, as quoted (supra), it would demonstrate reasonable connection to the discharge of official duty of the petitioner. The High Court of Madras in the case of ***RAMNATH GOENKA V. A.R. RAJI***[1] has held as follows:

> *"10. He also relies on the extracts incorporated in the above decision from Hori Ram Singh's case reported in AIR 1939 FC 43 : ((1939) 40 Cri LJ 468) and AIR 1948 PC 128 : ((1948) 49 Cri LJ 503). He also referred to me a decision of our High Court by Maheswaran, J. reported in Ramachandran In re, 1979 Mad LW (Cri) 180 : (1980 Cri LJ 349). The learned Judge, after referring to a number of cases under S. 197 Cri. P.C. has observed at page 184 (of Mad LW) (Cri): (at p. 353 of Cri LJ)—*
>
> > ***"I must point out that the act complained of must have some nexus with the duty so as to give rise to a reasonable conclusion that it was done by the accused in the performance of his official duty and the accused will be***

[1] ***1981 SCC OnLine Mad 107***

entitled to the protection of S. 197 Cri. P.C."

11. There is a plethora of decisions on the application of S. 197 Cri. P.C. but ultimately the test to be applied, whether the sanction is needed or not, depend on circumstances of each case. The learned counsel for the respondent brings to my notice the official functions and duties of the Principal Information Officer, press Conference Bureau, Government of India—

> *"Advising Government on the requirements of publicity through the medium of press in respect of various ministries. Disseminating information on the policies and activities of the Government; Maintaining liaison with press; the reporting to Government public policies and performance as reflected in the press."*

12. Thus it is seen that the handing over of the hand outs for publication is undoubtedly characteristic of the official duty of the respondent, I have no doubt that the acts complained of are so interrelated with the official duty of the Principal Information Officer, so as to attract the protection afforded by S. 197 Cri. P.C. The acts are so integrally connected with the duty attached to the officer it is not possible to separate them. At any rate, there is a reasonable connection between the act alleged by the respondent and his official duty. What has been alleged against him is certainly something to do with his official duty. Under these circumstances, opposing the principles laid down in the decisions referred above, I feel the order passed by the learned Chief Metropolitan Magistrate is correct. The revision fails and it is dismissed."

(Emphasis supplied)

The High Court of Delhi in the case of ***P.K. GHOSH & ANOTHER V. SUKHBIR SHARMA[2],*** has held as follows:

> *"5. That part, the said letter contains certain comments regarding the complaint made by the respondent against the Commissioner (Personnel) of the D.D.A. It does not contain any defamatory word against the respondent. That being so, there was absolutely no justification for taking cognizance of the offence under Section 500, IPC against petitioner No. 1.*
>
> ***6. It is undisputed that the petitioner No. 1 is the Vice-Chairman of the D.D.A. D.D.A. is an authority created under the statute by the Government and such an authority is an affair of the State and the Officer appointed as the Vice-Chairman of the D.D.A. is definitely a public servant employed in connection with the affairs of the State within the meaning of Section 197, Cr. P.C. Consequently, prosecution of the petitioner No. 1 is also bad for want of sanction under Section 197, Cr. P.C.***
>
> *7. So far as the petitioner No. 2 is concerned, there is nothing on record to make out any case against him. Admittedly, he is not he author of the letter in question. He had neither made nor published any defamatory statement against the respondent. It has to be borne in mind that setting criminal law in motion is fraught with serious consequences. Before issuing a process against the accused, the Magistrate should satisfy himself that the allegations made in the complaint on its face values and the sworn statements coupled with the documents filed prima facie reveal the*

[2] ***2000(56) DRJ (SUPPL) 87***

commission of any offence against him. In the instant case, the impugned order does not reflect that the learned Magistrate has applied his mind to the facts of the case and the law applicable thereto. On the other hand, I am constrained to observe that the learned Magistrate has acted in a mechanical manner in taking cognizance of the offence against the petitioners. In this context, I may usefully excerpt the following observations of Their Lordships of the Supreme Court in M/s. Pepsi Food Ltd. v. Special Judicial Magistrate, AIR 1998 SC 128.

> *"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complaint has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

> *For the foregoing reasons, the petition is allowed and the impugned order dated 3.3.1999 is set aside and the proceedings emanating from the complaint filed by the respondent and pending on the file of the Metropolitan Magistrate, Delhi are quashed."*
>
> *(Emphasis supplied)*

In the light of the afore-quoted judgments of both the High Court of Madras and High Court of Delhi, interpreting the interplay between Section 499 and 500 of the IPC and Section 197 of the Cr.P.C. it becomes unmistakably clear that sanction under Section 197 of the Cr.P.C. would be imperative, if the alleged defamatory statements are in the course of discharge of official duty.

13. The aforesaid interpretation is further amplified by the Apex Court in the case of ***D.DEVARAJA***[3] *(supra)*, wherein the Apex Court has interpreted sanction under Section 197 of the Cr.P.C. to be imperative, if the allegation that drives a case to the concerned criminal Court is in discharge of official duty or has a reasonable connection to it. The Apex Court has held as follows:

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[3] ***(2020) 7 SCC 695***

"30. The object of sanction for prosecution, whether under Section 197 of the Code of Criminal Procedure, or under Section 170 of the Karnataka Police Act, is to protect a public servant/police officer discharging official duties and functions from harassment by initiation of frivolous retaliatory criminal proceedings. As held by a Constitution Bench of this Court in Matajog Dobey v. H.C. Bhari: (AIR p. 48, para 15)

"15. ... Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. ...

There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction."

31. In Pukhraj v. Stateof Rajasthan this Court held: (SCC p. 703, para 2)

"2. ... While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in

the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "cloak of office" and "professed exercise of the office" may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty."

32. In Amrik Singh v. State of PEPSU this Court referred to the judgments of the Federal Court in Hori Ram Singh v. Crown; H.H.B. Gill v. King Emperor and the judgment of the Privy Council in Gill v. R. and held: (Amrik Singh case AIR p. 312, para 8)

"8. The result of the authorities may thus be summed up : 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."

33. Section 197 of the Code of Criminal Procedure, 1898, hereinafter referred to as the old Criminal Procedure Code, which fell for consideration in Matajog Dobey, Pukhraj and Amrik Singh is in pari materia with Section 197 of the Code of Criminal Procedure, 1973. The Code of Criminal Procedure, 1973 has repealed and replaced the old Code of Criminal Procedure.

34. In Ganesh Chandra Jew this Court held: (SCC pp. 46-47, para 7)

"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."

(emphasis supplied)

35. In State of Orissa v. Ganesh Chandra Jew this Court interpreted the use of the expression "official duty" to imply that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. Section 197 of the Code of Criminal Procedure does not extend its protective cover to every act or omission done by a public servant while in service. The scope of operation of the section is restricted to only those acts or omissions which are done by a public servant in discharge of official duty.

36. In Shreekantiah Ramayya Munipalli v. State of Bombay this Court explained the scope and object of Section 197 of the old Criminal Procedure Code, which as stated hereinabove, is in pari materia with Section 197 of the Code of Criminal Procedure. This Court held: (AIR pp. 292-93, paras 18-19)

"18. Now it is obvious that if Section 197 of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning. What it says is—

'When any public servant … is accused of any "offence" alleged to have been committed by him while acting or purporting to act in the discharge of his official duty….'

We have therefore first to concentrate on the word "offence".

19. Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the present case, the elements alleged against Accused 2 are, first, that there was an "entrustment" and/or "dominion"; second, that the entrustment and/or dominion was "in his capacity as a public servant"; third, that there was a "disposal"; and fourth, that the disposal was "dishonest". Now it is evident that the entrustment and/or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity.

Therefore, the act complained of, namely, the disposal, could not have been done in any other way. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because Accused 2 could not dispose of the goods save by the doing of an official act, namely, officially permitting their disposal, and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it."

37. The scope of Section 197 of the old Code of Criminal Procedure, was also considered in P. Arulswami v. State of Madras [P. Arulswami v. State of Madras, AIR 1967 SC 776 : 1967 Cri LJ 665] where this Court held : (AIR p. 778, para 6)

"6. ... It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted."

"If the act is totally unconnected with the official duty, there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable...."

38. In B. Saha v. M.S. Kochar this Court held : (SCC p. 185, para 18)

"18. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him."

39. In Virupaxappa Veerappa Kadampur v. State of Mysore cited by Mr Poovayya, a three-Judge Bench of this Court had, in the context of Section 161 of the Bombay Police Act, 1951, which is similar to Section 170 of the Karnataka Police Act, interpreted the phrase "under colour of duty" to mean "acts done under the cloak of duty, even though not by virtue of the duty".

40. In Virupaxappa Veerappa Kadampur this Court referred (at AIR p. 851, para 9) to the meaning of the words "colour of office" in Wharton's Law Lexicon, 14th Edn., which is as follows:

"Colour of office, when an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour."

41. This Court also referred (at AIR p. 852, para 9) to the meaning of "colour of office" in Stroud's Judicial Dictionary, 3rd Edn., set out hereinbelow:

"Colour:"Colour of office" is always taken in the worst part, and signifies an act evil done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office, is but a veil to the falsehood, and the thing is grounded upon vice, and the office is as a shadow to it. But "by reason of the office" and "by virtue of the office" are taken always in the best part."

42. After referring to the Law Lexicons referred to above, this Court held: (Virupaxappa Veerappa Kadampur case AIR p. 852, para 10)

"10. It appears to us that the words "under colour of duty" have been used in Section 161(1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police officer) prepares a false panchnama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in Stroud's Dictionary "as a veil to his falsehood". The acts thus done in dereliction of his duty must be held to have been done "under colour of the duty"."

43. In Om Prakash v. State of Jharkhand this Court, after referring to various decisions, pertaining to the police excess, explained the scope of protection under Section 197 of the Code of Criminal Procedure as follows: (SCC p. 89, para 32)

"32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant Singh [K. Satwant Singh v. State of Punjab, AIR 1960 SC 266: 1960 Cri

LJ 410]). The protection given under Section 197 of the Code 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 (Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104]). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood."

(emphasis supplied)

44. In Sankaran Moitra v. Sadhna Das the majority referred to Gili v. R , H.H.B. Gill v. King Emperor; Shreekantiah Ramayya Munipalli v. State of Bombay; Amrik Singh v. State of PEPSU ; Matajog Dobey v. H.C. Bhari ; Pukhraj v. State of Rajasthan ; B. Saha v. M.S. Kochar ; Bakhshish Singh Brar v. Gurmej Kaur ; Rizwan Ahmed Javed Shaikh v. Jammal Patel and held: (Sankaran Moitra case [Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584 : (2006) 2 SCC (Cri) 358] , SCC pp. 602-603, para 25)

"25. The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court

referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of the learned counsel for the complainant that this is an eminently fit case for grant of such sanction."

45. The dissenting view of C.K. Thakker, J. in Sankaran Moitra supports the contention of Mr Luthra to some extent. However, we are bound by the majority view. Furthermore even the dissenting view of C.K. Thakker, J. was in the context of an extreme case of causing death by assaulting the complainant.

46. In K.K. Patel v. State of Gujarat [K.K. Patel v. State of Gujarat, this Court referred to Virupaxappa Veerappa Kadampur and held: (K.K. Patel case SCC p. 203, para 17)

"17. The indispensable ingredient of the said offence is that the offender should have done the act "being a public servant". The next ingredient close to its heels is that such public servant has acted in disobedience of any legal direction concerning the way in which he should have conducted as such public servant. For the offences under Sections 167 and 219 IPC the pivotal ingredient is the same as for the offence

under Section 166 IPC. The remaining offences alleged in the complaint, in the light of the averments made therein, are ancillary offences to the above and all the offences are parts of the same transaction. They could not have been committed without there being at least the colour of the office or authority which the appellants held."

47. Mr Poovayya argued that the complaint filed by the respondent against the appellant-accused was in gross abuse of process, frivolous and mala fide. Controverting the allegation of the respondent in his complaint, of police excesses while the respondent was in police custody between 27-2-2013 and 14-3-2013 in connection with Crime No. 12/2012, Mr Poovayya referred to the order of the learned Chief Metropolitan Magistrate dated 28-2-2013 in the said crime case, observing that the respondent had not complained of any ill-treatment by the police.

48. Mr Poovayya submitted that the learned Chief Metropolitan Magistrate had, in any case, passed an order for medical examination of the respondent in view of his complaint of ill-treatment, but the medical reports, upon such examination, showed that there was no injury on the respondent. Mr Poovayya argued that the appellant-accused had been arrayed as the accused vindictively, out of vengeance, since the appellant-accused had, in his capacity as Deputy Commissioner of Police (Central Crime Branch), submitted an affidavit in the habeas corpus petition filed by the respondent's father in the Karnataka High Court. The said affidavit led to the dismissal of the habeas corpus petition.

49. Citing the judgment of this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Mr Poovayya argued that where a criminal proceeding is manifestly prompted by mala fides and instituted with the ulterior motive of vengeance due to private or personal grudge, power under Section 482 of the Criminal Procedure Code ought to be exercised to

prevent abuse of the process of court and/or to secure the ends of justice.

50. In State of Orissa v. Ganesh Chandra Jew cited by Mr Poovayya, this Court had, in similar circumstances, referred to and followed Bhajan Lal and held: (Ganesh Chandra Jew case SCC pp. 51-52, para 20)

"20. … The factual scenario as indicated above goes to show that on 28-2-1991 the respondent was produced before the Magistrate. He was specifically asked as to whether there was any ill-treatment. Learned SDJM specifically records that no complaint of any ill-treatment was made. This itself strikes at the credibility of the complaint. … Though there are several other aspects highlighted in the version indicated in the complaint and the materials on record are there, we do not think it necessary to go into them because of the inherent improbabilities of the complainant's case and the patent mala fides involved."

51. In K.K. Patel v. State of Gujarat this Court held: (SCC p. 201, paras 11-12)

"11. That apart, the view of the learned Single Judge of the High Court that no revision was maintainable on account of the bar contained in Section 397(2) of the Code, is clearly erroneous. It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide Amar Nath v. State of Haryana, Madhu Limaye v. State of Maharashtra , V.C. Shukla v. State and Rajendra Kumar Sitaram Pande v. Uttam. The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire

prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable.

12. Therefore, the High Court went wrong in holding that the order impugned before the Sessions Court was not revisable in view of the bar contained in Section 397(2) of the Code."

52. In D.T. Virupakshappa v. C. Subash, cited by Mr Poovayya, the question raised by the appellant before this Court was, whether the learned Magistrate could not have taken cognizance of the alleged offence which was of police excess in connection with the investigation of the criminal case, without sanction from the State Government under Section 197 of the Code of Criminal Procedure and whether the High Court should have quashed the proceedings on that ground alone.

53. This Court in Virupakshappa case held that the whole allegation of police excess in connection with the investigation of the criminal case, was reasonably connected with the performance of the official duty of the appellant. The learned Magistrate could not have, therefore, taken cognizance of the case, without previous sanction of the State Government. This Court found that the High Court had missed this crucial point in passing the impugned order, dismissing the application of the policeman concerned under Section 482 of the Code of Criminal Procedure.

54. In Ganesh Chandra Jew, the Magistrate had, as in this case, specially recorded that there was no complaint of any ill-treatment. This Court was of the view that continuance of the proceeding would amount to the abuse of the process of law. Accordingly, this Court set aside the judgment of the High Court whereby the High Court refused to exercise its power under Section 482 of the Criminal Procedure Code to quash an order of sub-Divisional Judicial Magistrate, in a complaint against police officials, without sanction under Section 197 of the Criminal Procedure Code.

55. Devinder Singh v. State of Punjab cited by Mr Luthra is clearly distinguishable as that was a case of killing by the police in fake encounter. Satyavir Singh Rathi v. State also pertains to a fake encounter, where the deceased was mistakenly identified as a hardcore criminal and shot down without provocation. The version of the police that the police had been attacked first and had retaliated, was found to be false. In the light of these facts, that this Court held that it could not, by any stretch of imagination, be claimed by anybody that a case of murder could be within the expression "colour of duty". This Court dismissed the appeals of the policemen concerned against conviction, inter alia, under Section 302 of the Penal Code, which had duly been confirmed by the High Court. The judgment is clearly distinguishable.

56. The judgment of this Court in State of A.P. v. N. Venugopal is distinguishable in that the policemen concerned, being the Sub-Inspector, Head Constable and a Constable attached to a police station had without warrant, illegally detained the complainant for interrogation under Section 161 of the Criminal Procedure Code in connection with a private complaint of house break and theft, assaulted him along with the private complainant to extract statements and left him in an injured condition.

57. In the context of the aforesaid, this Court held that an act is not "under" a provision of law merely because the point of time at which it is done coincides with the point of time when some act in the exercise of the powers granted by the provision or in performance of the duty imposed by it. To be able to say that an act is done "under" a provision of law, one must discover the existence of a reasonable relationship between the provisions and the act. In the absence of such a relation, the act cannot be said to be done under the particular provision of law. It cannot be said that beating a person suspected of a crime or confining him or sending him away in an injured condition, at a time when the police were engaged in investigation, were acts done or intended to be done under the provisions of the Madras District Police Act or the Criminal

Procedure Code or any other law conferring powers on the police. It could not be said that the provisions of Section 161 of the Criminal Procedure Code authorised the police officer examining a person to beat him or to confine him for the purpose of inducing him to make a particular statement.

58. In Bhanuprasad Hariprasad Dave v. State of Gujarat the Head Constable concerned was accused of preparing a false report with the dishonest intention of saving a person from whom ganja had been seized, after obtaining illegal gratification. The Court held that demand and/or acceptance of illegal gratification could not be said to be an act done under colour of duty. Significantly, the policemen concerned had been tried and convicted and their conviction was affirmed by the High Court. The Head Constable concerned was seeking bail in this Court.

59. The judgment in State of Maharashtra v. Atma Ram, was rendered in an appeal from a judgment and order of the High Court, whereby the High Court had reversed the conviction of the policemen concerned under Sections 330, 342, 343 and 348 of the Penal Code, holding the prosecution to be barred under Section 161(1) of the Bombay Police Act. Allowing the appeal of the State, this Court held that Section 64(b) which confers duty on every police officer to obtain intelligence concerning the commission of cognizable offences or designs to commit such offences and to take such other steps to bring offenders to justice or to prevent the commission of cognizable and non-cognizable offences, did not authorise any police officer to beat persons in the course of examination for the purpose of inducing them to make any particular statement or to detain such persons. The acts complained of were factually found not to have been done under colour of any duty or authority. The order of the High Court acquitting the policemen concerned was thus, set aside.

60. In Bakhshish Singh Brar v. Gurmej Kaur, the question raised before this Court was, whether while carrying out investigation in performance of duty as a policeman, it was necessary for the policeman concerned to conduct

investigation in such a manner as would result in injury and death. This Court held that trial of a police officer, accused of accused of causing grievous injury and death in conducting raid and search, need not be stayed for want of sanction for prosecution of the police officer, at the preliminary stage, observing that criminal trial should not be stayed at the preliminary stage in every case, as it might cause damage to the evidence. The Court observed that if necessary, the question of sanction might be agitated at a later stage.

61. In Om Prakash v. State of Jharkhand this Court held: (SCC pp. 90-91 & 95, paras 34 & 42-43)

"34. In Matajog Dobey the Constitution Bench of this Court was considering what is the scope and meaning of a somewhat similar expression 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' occurring in Section 197 of the Criminal Procedure Code (5 of 1898). The Constitution Bench observed that no question of sanction can arise under Section 197 unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. On the question as to which act falls within the ambit of abovequoted expression, the Constitution Bench concluded that there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim that he did it in the course of performance of his duty. While dealing with the question whether the need for sanction has to be considered as soon as the complaint is lodged and on the allegations contained therein, the Constitution Bench referred to Hori Ram Singh and observed that at first sight, it seems as though there is some support for this view in Hori Ram Singh because Sulaiman, J. has observed in the said judgment that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution and Varadachariar, J. has also stated that : (Matajog Dobey case AIR p. 49, para 20)

'20. … the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceedings.'

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The legal position is thus settled by the Constitution Bench in the above paragraph. Whether sanction is necessary or not may have to be determined from stage to stage. If, at the outset, the defence establishes that the act purported to be done is in execution of official duty, the complaint will have to be dismissed on that ground.

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42. It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial. This Court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognised as legal by our criminal justice administration system. They amount to State-sponsored terrorism. But, one cannot be oblivious of the fact that there are cases where the police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact. In such circumstances, while the police have to do their legal duty of arresting the criminals, they have also to protect themselves. The requirement of sanction to prosecute affords protection to the policemen, who are sometimes required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. Sanction must be a precondition to their prosecution. It affords necessary protection to such police personnel. The plea regarding sanction can be raised at the inception.

43. In our considered opinion, in view of the facts which we have discussed hereinabove, no inference can be drawn in

this case that the police action is indefensible or vindictive or that the police were not acting in discharge of their official duty. In Zandu Pharmaceutical Works Ltd. this Court has held that the power under Section 482 of the Code should be used sparingly and with circumspection to prevent abuse of process of court but not to stifle legitimate prosecution. There can be no two opinions on this, but, if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of court, the power under Section 482 of the Code must be exercised and proceedings must be quashed. Indeed, the instant case is one of such cases where the proceedings initiated against the police personnel need to be quashed."

62. In Pukhraj v. State of Rajasthan the accused Postmaster General, Rajasthan had allegedly kicked and abused a union leader who had come to him when he was on tour, to submit a representation. This Court held that Section 197 of the Code of Criminal Procedure, which is intended to prevent a public servant from being harassed does not apply to acts done by a public servant in his private capacity. This Court, however, left it open to the accused public servant to place materials on record during the trial to show that the acts complained of were so interrelated with his official duty as to attract the protection of Section 197 of the Criminal Procedure Code.

63. In Rizwan Ahmed Javed Shaikh v. Jammal Patel, this Court held that where the gravamen of the charge was failure on the part of the accused policemen to produce the complainants, who were in their custody, before the Judicial Magistrate, the offence alleged was in their official capacity, though it might have ceased to be legal at a given point of time, and the accused police officers would be entitled to the benefit of Section 197(2) of the Criminal Procedure Code.

64. The judgment in B. Saha v. M.S. Kochar was rendered in the context of allegations against the Customs Authorities of misappropriation or conversion of goods. This Court held that while the seizure of goods by the custom officers concerned was an act committed in discharge of official duty, the subsequent acts of misappropriation or

conversion of the goods could not be said to be viewed as under the colour of official duty. Accordingly, this Court held that sanction for prosecution was not necessary.

65. The law relating to the requirement of sanction to entertain and/or take cognizance of an offence, allegedly committed by a police officer under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, is well settled by this Court, inter alia by its decisions referred to above.

66. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the Government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate Government.

67. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. *An offence committed entirely outside the scope of the duty of the police*

officer, would certainly not require sanction. To cite an example, a policeman assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However, if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

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.

69. The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.

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)

The Apex Court, in the afore-quoted judgment, considers entire spectrum of law as emanated from 1956 till the date of delivery of the judgment, as to why it is imperative that protection under Section 197 of the Cr.P.C. should be strictly construed to protect public servants from fearless discharge of their official duties. The said judgment would cover the issue in the case at hand on all its fours insofar as sanction to prosecute a public servant, in the case at hand - a police officer.

14. Insofar as non-obtaining of sanction from the hands of the Competent Authority prior to the Court taking cognizance, it is an admitted fact that in the case at hand, no sanction is sought or accorded by the Competent Authority. Therefore, any proceeding of taking cognizance and setting of criminal law in motion thereon without sanction will lose its legs to stand and would, therefore, suffer from want of tenability.

15. The contention of the learned counsel appearing for the respondent that the petitioner had left the post by the time the complaint was registered and, therefore, sanction is noted, only

to be repelled, as it is fundamentally flawed. Leaving the post cannot be equated with leaving the service. Change of post will not mean that the petitioner has ceased to be a public servant. The petitioner continues to be a public servant in any post in the cadre and the act performed by a public servant during any time in service if sought to be given a colour of crime by wanting to set the criminal law in motion, in some cases even after retirement, sanction under Section 197 of the Cr.P.C. is imperative. This is the purport of the law declared, as extracted hereinabove.

16. The judgments relied on by the learned senior counsel representing the respondent would bring no assistance to him as they are all judgments rendered in the peculiar facts of those cases. It is no law, declared by the Apex Court that sanction would not be required if the public servant has ceased to hold that particular post. As long as the public servant remains a public servant and his/her actions are sought to be alleged of crime, sanction would become necessary. The judgment in the

case of ***PARKASH SINGH BADAL*** *(supra)* was concerning requirement of sanction after ***PARKASH SINGH BADAL*** had ceased to be the Chief Minister of Punjab. The act committed while he was the Chief Minister was sought to be alleged after cessation of office. The cadre officers would cease to become public servants only on their cessation of service by any mode. They cannot be compared to politicians. Same goes with every judgment that is relied on by the learned senior counsel appearing for the respondent.

17. The other judgments that are relied on are concerning the fact whether sanction under Section 197 of the Cr.P.C. would be required for acts performed by such public servant which were not in the discharge of their official duty. The reasonable connection between the official duty and the alleged act committed by those public servants is what was considered by the Apex Court in the other case – ***URMILA DEVI*** *(supra)*. Therefore, the judgments relied on in the case of ***D.DEVARAJA*** *(supra)* and that of other High Courts is what would become

applicable to the case at hand and none of the armory from the arsenal of the learned senior counsel appearing for the respondent would support the case of the respondent, as the judgment in the case of ***D.DEVARAJA*** *(supra)* is overwhelming *qua* the facts of the case at hand. Therefore, I answer issue No.1 against the respondent holding that the learned Magistrate could not have taken cognizance of the aforesaid offences without an order of sanction for such prosecution from the hands of the Competent Authority.

18. **Issue No.2:**

(ii) Whether the alleged communication/report dated 12-07-2017 amounts to defamation within the meaning of ingredients of Section 499 of the IPC against the petitioner?

The second issue is as to whether the report submitted would be defamatory also merits consideration. In my view, the report was an official communication from the petitioner to the head of the department. The factual happenings in the prison

were highlighted and what was being spoken about was only a caution. A pure official communication without it being referred to any other department or a quarter, cannot become the ingredient of Section 499 of the IPC. Section 499 of the IPC reads as follows:

> *"**499. Defamation**.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, **makes or publishes** any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.*
>
> *Explanation 1.––It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.*
>
> *Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.*
>
> *Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.*
>
> *Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a lothsome state, or in a state generally considered as disgraceful.*

A perusal at the provision of law that is invoked to bring in allegations under Section 499 of the IPC clearly mandates that one who makes or publishes any imputation concerning any person with an intention to harm is said to defame the said person, except the issues covered under the exceptions. Therefore, making or publishing is the *nucleus* of the section. The words makes or publishes if considered *qua* the impugned communication, it becomes clear that even if it is made, it is not published to any quarter by the petitioner. Making of the communication is also restricted to the reporting of outcome of the inspection and between two people. It is, on its perusal, a pure official communication between two people as to what was happening in the prison during the inspection that was conducted. In these circumstances, reference being made to the judgment of the Apex Court in the case of ***RAJESH RANGARAJAN V. CROP CARE FEDERATION OF INDIA AND ANOTHER***[4], becomes

[4] ***(2010) 15 SCC 163***

apposite. The Apex Court considering an identical circumstance of official communication has held as follows:

> *"2. Mr Raj Panjwani, learned Senior Counsel appearing for the appellant has drawn our attention to Annexure P-1, which is the Report of the Fact-Finding Committee which deals with farmers' deaths due to exposure to pesticides in Warangal District of Andhra Pradesh. We have carefully perused the Report. The relevant page of the Report, which is at p. 40 of the paper book, clearly indicates that the Fact-Finding Committee was not aimed at doing health study or in-depth scientific investigation, but to do an indicative study which would lead to a larger health study.* ***The general tenor of the Report indicates that the Report was meant to focus the harmful effects of exposure to pesticides. It is quite evident from the Report that it was not meant to harm, hurt or defame any individual or the manufacturing company.*** *Mr Panjwani, learned Senior Counsel appearing for the appellant also fairly submitted that the Report was not intended to harm or defame any individual or manufacturers of pesticides.*
>
> ***3. In our considered opinion, the complaint filed under Sections 120-B, 34, 500, 501 and 502 of the Penal Code, 1860 lacks basic ingredients. According to our view, no useful purpose would be served in permitting the trial court to proceed with the complaint which lacks the basic ingredients of the aforementioned sections. Consequently, we quash the complaint."***
>
> *(Emphasis supplied)*

The Apex Court was considering an official report by the accused therein and has held that it is an official

communication and no offence under Section 500 or 501 of the IPC can be made out of such official communication.

19. In the light of the preceding analysis and the admitted fact that no sanction is sought or granted by the Competent Authority to prosecute the petitioner for offences punishable under Sections 499 and 500 of the IPC and the fact that the communication being purely official between two people, the contents of it, in the considered view of this Court, would not attract the ingredients of Section 499 of the IPC, as it cannot be held to be defamatory. Therefore, I hold issue No.2 in favour of the petitioner for the reasons indicated hereinabove.

20. It is trite that criminal prosecution is a serious matter; it affects the liberty of a person, therefore, in cases where this Court finds that permitting further proceedings would become an abuse of the process of the law or would result in miscarriage of justice, exercise of jurisdiction under Section 482 of the Cr.P.C. to obliterate such proceedings would become imperative.

Wherefore, further proceedings against the petitioner, cannot be permitted to be continued.

21. For the aforesaid reasons, I pass the following:

O R D E R

(i) The Criminal Petition is allowed.

(ii) The impugned proceedings in C.C.No.2610 of 2020 pending before the IX Additional Chief Metropolitan Magistrate, Bangalore stands quashed.

Sd/-
JUDGE

bkp
CT:MJ