SANKARAN MOITRA

v.

SADHNA DAS AND ANR.

MARCH 24, 2006

[Y.K. SABHARWAL, CJ., P.K. BALASUBRAMANYAN AND C.K. THAKKER, JJ.]

Code of Criminal Procedure, 1973—Section 197(1)—Death due to police lathi charge on day of election to State Assembly—Prosecution of accused police officer—Sanction as required under Section 197(1) not obtained—Held: If a person is killed by use of excessive force by police officer in performance of duty or purported performance of duty, Section 197(1) cannot be by-passed by reasoning that killing a man could never be done in an official capacity—Requirement of sanction prescribed in Section 197(1) was a condition precedent for a successful prosecution though question may have arisen not at inception, but at a subsequent stage—In the facts of case, act of police officer found to be done in performance of his duty to prevent breach of law and maintain order on polling day—It was so since he was in uniform and had travelled to spot near polling booth in official jeep subsequent to receipt of information in Police Station suggesting imminent clashes between supporters of two political parties there—Prosecution quashed for want of requisite sanction.

On the day of election to a State Assembly, appellant, Assistant Commissioner of Police, reached a polling booth. On reaching there, he had a discussion with officer-in-charge of a police station. Thereafter a lathi charge by police constables took place wherein husband of respondent no. 1 died. On her complaint to Deputy Commissioner of Police, cases were registered in police station against unknown police officials. About two weeks thereafter, she filed a private complaint in the Chief Judicial Magistrate (CJM), accusing appellant, amongst others, of various offences under IPC. Cognisance was taken on this complaint, and after recording statements of witnesses, warrant for arrest of appellant was issued. Appellant filed application before CJM under Section 210 Cr. PC. seeking stay of proceedings on the complaint on the ground that investigation of cases registered by police was pending. Before passing of any order on

A this application, appellant filed a petition before High Court under Section 482 Cr PC seeking quashing of the complaint on the ground that CJM did not have the jurisdiction to entertain the complaint as sanction required under Section 197(1) Cr PC had not been obtained. High Court dismissed this petition after considering the post mortem report and evidence of witnesses, holding that it was a case of merciless beating by police officer causing death
B of a person, which could not be said to be an act in discharge of official duty, and for this reason no sanction was required under Section 197(1) Cr. PC. Hence the present appeal.

Appellant contended that (i) he was a police officer on duty, and had
C gone to the polling booth in his police uniform and in the official jeep pursuant to receipt of a message about rioting and law and order problem there; hence the act was done in discharge of his duty, and his prosecution could not be proceeded with without sanction as required under Section 197(1) Cr PC (ii) the case was covered by Section 210 of the Code and proceedings in the private complaint filed by the respondent were required to be stayed.
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Respondent contended that as the Magistrate did not have occasion to consider the applicability of Section 197 Cr. PC, contentions of appellant based on this provision should not be decided by the Court, especially as they could be raised on his appearance before Magistrate.

E Allowing the appeal, the Court

HELD:

Per P.K. Balasubramanyan J., (for himself and Y.K. Sabharwal, CJI)

1.1. The High Court has stated that killing of a person by use of
F 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 by-passed by reasoning that killing a man could never be done in an official
G capacity and consequently Section 197(1) of the Code could not be attracted. [316-B-D]

1.2. That it was the day of election of the State Assembly, that the appellant was in uniform; that the appellant travelled in an official jeep to the spot, near a polling booth and the offence was committed while he was on the
H spot may not by themselves attract Section 197(1) of the Code. But, as can be

seen from the facts disclosed in the counter affidavit filed on behalf of the State based on the entries in the General Diary of the Phoolbagan Police Station, it emerges that on the election day information was received in the Police Station at 1400 hours of some disturbance at a polling booth, that it took a violent turn and clashes between the supporters of two political parties was imminent. It was then that the appellant reached the site of the incident in his official vehicle. It is seen that a case had been registered on the basis of the incidents that took place and a report in this behalf had also been sent to the superiors by the Station House Officer. It is also seen and it is supported by the witnesses examined by the Chief Judicial Magistrate while taking cognisance of the offence that the appellant reached the spot and thereafter a lathi charge took place or there was an attack on the husband of the complainant and he met with his death. Obviously, it was part of the duty of the appellant to prevent any breach of law and maintain order on the polling day or to prevent the blocking of voters or prevent what has come to be known as booth capturing. It therefore emerges that the act was done while the officer was performing his duty. That the incident took place near a polling booth on an election day has also to be taken no of. The complainant no doubt has a case that the deceased was picked and chosen for ill treatment and he was beaten up by a police constable at the instance of the appellant and the Officer-in-charge of the Phoolbagan Police Station and at their behest. If that complaint were true it will certainly make the action, an offence leading to further consequences. It is also true that the entries in the General Diary remain to be proved. But still, it would be an offence committed during the course of the performance of his duty by the appellant and it would attract Section 197 of the Code. It has to be held that a sanction under Section 197(1) of the Code of Criminal Procedure is necessary in this case.

[324-H; 325-A-F]

1.3. For want of sanction the prosecution must be quashed. [319-B-C]

Shreekantiah Ramayya Munipalli v. *The State of Bombay,* [1955] 1 SCR 1177, *Amrik Singh* v. *The State of PEPSU,* [1955] 1 SCR 1302, *Matajog Dobey* v. *H.C. Bhari,* [1955] 2 SCR 925, *Pukhraj* v. *State of Rajasthan and Anr.,* [1973] 2 SCC 701, *B. Saha and Ors.* v. *M.S. Kochar,* [1979] 4 SCC 177, *Bakhshish Singh Brar* v. *Gurmej Kaur and Anr.,* [1987] 4 SCC 663, *Rakesh Kumar Mishra* v. *State of Bihar and Ors.,* [2006] 1 SCC 557 and *Rizwan Ahmad Javed Shaikh and Ors.* v. *Jammal Patel and Ors.,* [2001] 5 SCC 7, relied on.

A 2. Postponing a decision on the applicability or otherwise of Section 197(1) of the Code can only lead to the proceedings being dragged on in the trial Court and a decision by this Court, here and now, would be more appropriate in the circumstances of the case especially when the accused involved are police personnel and the nature of the complaint made is kept in mind. [319-C-D]

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Dr. Hori Ram Singh v. *Emperor,* (1939) FCR 159 and *H.H.B. Gill and Anr.* v. *The King,* 75 Indian Appeals 41, referred to.

3. Argument of this respondent that want of sanction under Section 197(1) of the Code did not affect the jurisdiction of the Court to proceed, C but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate time, cannot be accepted. Section 197(1), its opening words and the object sought to be achieved by it and the decisions of this Court clearly indicate that a prosecution hit by that provision cannot be launched without the sanction contemplated. It is a D condition precedent, as it were, for a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at the inception, but even at a subsequent stage. The request to postpone a decision on this question cannot be accede to. [324-E-G]

4. The other reason given by the High Court that if the High Court E 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 F 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. [326-F-H]

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Per C.K. Thakker J (Dissenting):

1. The primary object of the Legislature behind Section 197 of the Code is to protect public officers who have acted in discharge of their duties or purported to act in discharged of such duties. But, it is equally well

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settled that the act said to have been committed by public officer must have reasonable connection with the duty sought to be discharged by such public officer. If the act complained of has no nexus, reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an offence, he cannot get shelter under Section 197 of the Code. In other words, protection offered by said section is qualified and conditional. [341-G-H; 342-A] A B

Dr. Hori Ram Singh v. *Emperor,* (1939) FCR 159, *H.H.B. Gill and Anr.* v. *The King,* 75 Indian Appeals 41, *Shreekantiah Ramayya Munipalli* v. *The State of Bombay,* [1955] 1 SCR 1177, *Amrik Singh* v. *The State of Pepsu,* [1955] 1 SCR 1302, *Matajog Dobey* v. *H.C. Bhari,* [1955] 2 SCR 925, *P. Arulswami* v. *State of Madras,* [1967] 1 SCR 201, *Pukhraj* v. *State of Rajasthan and Anr.,* [1973] 2 SCC 701, *B. Saha and Ors.* v. *M.S. Kochar,* [1979] 4 SCC 177, *Bakhshish Singh Brar* v. *Gurmej Kaur and Anr.,* [1987] 4 SCC 663, *P.K. Pradhan* v. *State of Sikkim,* [2001] 6 SCC 704, *State of Orissa* v. *Ganesh Chandra Jew,* [2004] 8 SCC 40, *S.K. Kalimuthu* v. *State by DSP,* [2005] 4 SCC 512 and *Rakesh Kumar Mishra* v. *State of Bihar and Ors.,* [2006] 1 SCC 55, relied on. C D

2.1. From the material which has been placed on record, it is amply clear that the appellant and other police officers had acted illegally, unlawfully and highhandedly. In the complaint, it was stated by the widow of deceased that accused chased her husband and assaulted him by causing several injuries which resulted in his death. But, apart from what is stated in the complaint, the Chief Judicial Magistrate had recorded statements of witnesses mentioned in the complaint. It was stated by them that the deceased had not indulged in any illegal activity. He had not done any unlawful act. He had no weapon with him. He was distributing food packets at the polling booth of a particular political party. He was assaulted and beaten by accused persons who were police officers. When the deceased left the place, the police officers chased him and continued to beat him. When deceased reached near a lake, he requested the police officers not to beat him. He also stated that he did not know how to swim and prayed to leave him. But the police officers did not pay any heed to his request and continued beating, which resulted in his death. [342-F-H; 343-A] E F G

2.2. The High Court considered the post mortem examination report in its proper perspective and was wholly justified in observing that 'it was a merciless beating by a police officer' causing death of a person which could H

A not be said to be an act in discharge of official duty. The High Court was also right in stating that post mortem report clearly indicated the nature and extent of injuries on the victim. Other witnesses had given vivid description of the offence committed by the accused persons. The said finding, which is supported by material on record, cannot be said to be based on 'on evidence' or otherwise perverse, nor it can be concluded that an error of law has been committed by the High Court which requires to be corrected by this Court in the exercise of discretionary jurisdiction under Article 136 of the Constitution. Hence, no interference is called for against the said order. [344-D-E]

3.1. Section 210 of the Code has no application to the facts of the case on hand. Section 210 requires procedure to be followed when there is a complaint case and police investigation in respect of the same offence. [344-F]

3.2. Before Section 210 can be invoked, following conditions must be satisfied: (i) There must be a complaint pending for inquiry or trial; (ii) Investigation by the police must be in progress in relation to the same offence (iii) A report must have been made by the police officer under Section 173; (iv) The magistrate must have taken congnisance of an offence against a person who is accused in the complaint case. [346-B-C]

3.3. In the impugned order passed by the High Court, no such contention appears to have been raised by the appellant. On the basis of the complaint filed by the complainant and on being satisfied on the material placed on record, the Chief Judicial Magistrate had proceeded with the case which cannot be said to be illegal. [346-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 330 of 2006.

From the Final Judgment and Order dated 11.7.2003 of the Calcutta High Court in C.R.R. No. 1256/2003.

K.T.S. Tulsi, H.K. Puri, S.K. Puri and V.M. Chauhan for the Appellant.

Pradip Kumar Ghosh, Somiran Sharma, Amit Sharma and S. Muralidhar for Respondent No. 1

Avijit Bhattacharjee and Ms. Saumya Kondu for State.

The Judgment of the Court was delivered by

P.K. BALASUBRAMANYAN, J.

1. Leave granted.

2. The husband of Respondent No.1 herein, met with his end on 10.5.2001. On 12.5.2001, Respondent No.1 (hereinafter referred to as the 'complainant') filed a complaint before the Deputy Commissioner of Police that she had come to know from the members of the public that while her husband was coming from Beliaghata Subhas Sarobar he was beaten to death by the police. She stated that she wanted the post-mortem examination of her innocent husband Robindranath Das to be held in the presence of a Magistrate and video recording of the portions of the body of her husband whereon it had been hit by the police. She demanded stern punishment for the murderer of her husband. On 28.5.2001, she filed a complaint in the court of the Chief Judicial Magistrate, Alipore in respect of offences, punishable according to her under Sections 302, 201, 109 read with Section 120-B of the Indian Penal Code. In the complaint, she stated that she was a house-wife and, that her husband Robindranath Das, was a businessman and a social worker. The antecedents of her husband were above board and he always acted on the right side of the law. He was also an active supporter of a particular political party. On 10.5.2001, the General Election to the Assembly in West Bengal was held. Her husband was in-charge of giving food packets to the polling agents of a contesting political party in the booth in C.I.T. office situated at Subhas Sarobar (Beliaghata Lake). When her husband did not turn up for lunch, before she left for casting her vote, she asked her brother to summon her husband for lunch. She was returning at about 1415 hours after casting her vote. While she was returning, a Tata Sumo Car came along, being driven at speed and in that car she found a local resident Anath sitting. When she reached the vicinity of Vivekananada Club, she found there assembled, a crowd of local people. When she enquired what had happened, one of those assembled said that the police had severely assaulted her husband with lathi in the lake, her husband had became unconscious, and he had been taken to the doctor in a Tata Sumo Car. On further enquiry, she was told that her husband was assaulted for no reason by the police with lathis on his head near the C.I.T. office at the Lake instigated by the "Bara Babu" of Phoolbagan Thana and Moitra Babu, previous "Barababu" of Beliaghata Thana at about 1400 hrs. Subsequently, she came to learn from various persons of the locality including her brother and her brother-in-law that her husband was talking near the outer gate of the C.I.T. office area at Subhas Sarobar with Mr. S.K. Kundu, the 'Barababu' of Phoolbagan Police station at about 1400 hours. At

A that point of time, the previous officer-in-charge of Beliaghata Police Station, at the time of the complaint, the Assistant Commissioner of E.S.D. (Eastern Suburban Division), Calcutta came there by a police jeep and after talking with the Officer in charge, Phoolbagan Police Station ordered the beating up of her husband and accordingly the Officer in charge, Phoolbagan Police Station instigated the police constables who were accompanying them to beat her B husband and to kill him. Thereupon, a constable, namely, Sudhir Sikdar assaulted her husband with a lathi and her husband tried to run away to save his life but the police personnel chased him. Her husband fell down in the water at the edge of the lake. He requested the chasing police personnel not to assault him and he told them that he did not know how to swim. In spite C of repeated requests and begging for his life by her husband, the police constable Sudhir Sikdar struck successive blows on the head of her husband, and other different portions of his body with a lathi, as a result of which her husband became unconscious and fell in the lake. Then the police personnel left the place. Her brother and brother-in-law, with the help of others who were eye-witnesses to the incident pulled out her husband from the water. D Thereafter, Anath a local person, with the help of others removed her husband in an unconscious state to the nearby Divine Nursing Home where the doctor declared him dead. The people seeing the atrocities of the police personnel in attacking an innocent person, became agitated. After a considerable lapse of time, the body of her husband was removed by the police from the Nursing E Home. According the complainant, the accused persons had no legal authority to kill her husband, an innocent person, without any provocation from his end. Hence the accused, in collusion with each other and having a common intention and in pursuance of a conspiracy hatched up among themselves, have committed an offence punishable under Sections 302, 120-B, 109 read with Section 34 of the Indian Penal Code. They were guilty of violating of F the provisions of law and they were liable for exemplary punishment. Accused Nos.1 and 2 further abetted the murderous assault on the victim by accused No.3 by instigating him openly to assault and kill her husband. The accused persons had taken advantage of their uniforms and had murdered her husband in a planned manner and hence were guilty of murder. She feels, from the G available circumstances, that the death of her husband was the result of a deep rooted conspiracy and to fulfill the vested interest of some interested persons, which would be revealed at the time of trial. She therefore prayed that the learned Magistrate be pleased to take cognizance and issue process against the accused persons and after their appearance pass necessary orders in accordance with law. She arrayed the Assistant Commissioner Sankaran

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Moitra as Accused No.1, S.M. Kundu, Officer-in-charge, Phoolbagan Police Station, Calcutta as Accused No. 2 and Sudhir Sikdar, a police constable attached to Phoolbagan Police Station, Calcutta as Accused No.3. A

3. On 31.5.2001, the Chief Judicial Magistrate, Alipore took the statements of the complainant and the witnesses produced by her which included her brother and her brother-in-law and issued process to the accused. B The Chief Judicial Magistrate thus took cognizance of the offence. On 16.6.2001, the Chief Judicial Magistrate issued a warrant for the arrest of accused no.1. On 30.6.2001, accused no.1, the then Assistant Commissioner of Police, moved an application under Section 210 of the Code of Criminal Procedure. Therein, after referring to the complaint filed by the complainant, C he submitted that on the self same matter on the written complaint of the complainant made on 12.5.2001, a case had been registered in the Phoolbagan Police Station as Case No. 112 of 2001 under Section 304 of the India Penal Code. The complainant had filed the said complaint addressed to the Deputy Commissioner of Police, Eastern Division, Calcutta on 11.5.2001 basing upon which the case was registered on 12.5.2001. Thereafter, one Fax message D was sent addressed to the Joint Commissioner of Police, Calcutta concerning the death of Robindranath Das, wherein the place of occurrence was mentioned as Beliaghata Lake and himself and two other persons above mentioned as the assailants with a prayer that a case be registered under Section 302, 506(II) and 114 of the India Penal Code, with a further prayer that the Fax E message be treated as "First Information Report". That Fax was sent by a brother of the deceased. On the self-same incident under an order of Superiors, a case has been registered on 12.5.2001. The complaint was filed before the Magistrate on 28.5.2001 by the informant in the Phoolbagan Police Station case. An investigation by Police was in progress in relation to the offence which is the subject matter of the enquiry held by the Chief Judicial Magistrate. F In view of this, he prayed that the proceedings in the enquiry held by the Chief Judicial Magistrate be stayed and a report on the matter from the Officer-in-charge of Phoolbagan Police Station be called for. By a separate application, he also prayed that the application under Section 210 of the Code of Criminal Procedure may be directed to be put up immediately for orders. G The Chief Judicial Magistrate ordered that the application under Section 210 of the Code of Criminal Procedure be put up on 10.7.2001.

4. Meanwhile, accused No. 1 had filed an application for anticipatory bail before the High Court of Calcutta. On 20.6.2003, the High Court refused anticipatory bail. Accused No. 1 approached this Court challenging the order H

A refusing anticipatory bail. This Court by order dated 28.7.2003 rejected the Petition for Special Leave to Appeal stating that there was no merit in it.

5. Accused No. 1, meanwhile, filed a Petition under Section 482 of the Code of Criminal Procedure before the High Court seeking a quashing of the complaint on the ground that the Chief Judicial Magistrate had no jurisdiction B to entertain the complaint since the condition precedent for entertaining the complaint, a sanction under Section 197(1) of the Code of Criminal Procedure, had not been obtained. In that application, after referring to the proceedings before the Magistrate, he pleaded that he had filed an application on 30.6.2001 under Section 210 of the Code of Criminal Procedure before the Chief Judicial C Magistrate seeking a stay of the proceedings in view of the pending investigation into the earlier complaint. But the Magistrate without passing any order thereon had kept it pending with a direction to serve copy on the other side. He submitted that the learned Magistrate had erred in issuing a warrant of arrest at the first instance without complying with the provisions of the Code of Criminal Procedure. An opportunity ought to have been given D to him to appear before court by issuing summons at the first instance. In a case instituted on the basis of a complaint in terms of the provisions of Sections 61 and 62 of the Code of Criminal Procedure and by not adverting to these provisions, the Magistrate had acted contrary to law. He submitted that the incident was not as described by the complainant. He then stated as E follows:

> "It is stated that on 10.5.2001 at about 1410 hrs on getting an information of some disturbance at the Polling Station at C.I.T. Office. Subhas Sarobar, the Petitioner No.2 along with Police Force reached the spot and found violence inside and around the polling premises F between the supporters of C.P.I. (M) and T.M.G. On reaching there, they tried to separate both the groups from each other to prevent serious cognizable offence as the mob ware in agitated condition over the issue of proxy voting, both Jamming etc. and there was every likelihood of a serious rioting. The purpose of the Police Personnel's being present at the spot was to control the mob free and fair election. G In the meantime the petitioner also arrived at the spot and the agitated mob started throwing brick bats and bomb indiscriminately aiming towards the Police force. The Police stepped into action and chased the unruly mob when a group dispersed towards two opposite directions.
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> H It is therefore learnt that one/two persons while retreating at random

jumped in Subhas Sarobar Lake and as result of which they might sustain injuries on their persons and out of aforesaid persons the victim Robindranath Das Topi was one of them.

That on the basis of the aforesaid incident a case was started by the Police Sumo to being Phoolbagan Police Station Case No. 111 dated 10.5.2001 against 20/30 persons including Robindranath Das under Section 148/149/336 of the India Penal Code and Section 3 and 5 of Explosive Substance Act.

That the Petitioner submits that initially the opposite Party No.1 lodged an information against some unknown Police Personnel as stated above but subsequently at the instance of some designing and interested persons implicated the Petitioner falsely in the present complaint case by introducing false, concocted and after thought story which was filed before the learned Court below 18 days after the alleged incident.

That the petitioner states that the learned Magistrate erred in taking cognizance on the basis of the aforesaid complaint in absence of Sanction for prosecution under Section 197 of the Code of Criminal Procedure as the petitioner being the Public servant being appointed by the Government of West Bengal and not removable from his office save by all with the sanction of the Government and for any purported act in discharge of his official duty cognizance without previous sanction is bad in the eye of law and liable to be set aside for the ends of justice.

That the petitioner submits that the learned Magistrate totally overlooked the provisions of Section 197 of the Code of Criminal Procedure i.e. no Court shall take cognizance of any offence alleged to have been made by a Public Servant in discharge of his official duty without the previous sanction from the Government and as such the order taking cognizance in absence of sanction mandatory is unsustainable in law as also all other consequential orders are also unsustainable in law."

6. The High Court by order dated 11.7.2003 dismissed the application. It overruled the contention of the accused based on Section 197 of the Code of Criminal Procedure thus:

"In its considered view Section 197 Cr.P.C. has got no manner of application in the present case. Under Section 197 Cr. P.C. sanction is

A required only if the public servant was, at the time of commission of offence, 'employed in connection with the affairs of the Union or of a State' and he was 'not removable from his office save by or with the sanction of the Government.' The bar under Section 197 Cr.P.C. cannot be raised by a public servant if he is removable by some authority without the sanction of the Government.

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Committing an offence can never be a part of an official duty. Where there is no necessary connection between the act and the performance of the duties of a public servant, section 197 Cr.P.C. will not be attracted. Beating a person to death by a police officer cannot be regarded as having been committed by a public servant within the scope of his official duties."

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After referring to the some of the decisions cited, the Court further stated:

"Committing of an offence of murder can never be a part of an official duty. Where there is no necessary connection between the act and the performance of the duties of a public servant, Section 197 of the Code will not be attracted. Merciless beating by a police officer causing death of a person can never be said to be an act in discharge of his official duty."

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The Court stated that since from the statement of the doctor who conducted the post-mortem examination it appeared that the victim had suffered as many as six serious injuries and in the opinion of the doctor, the death was due to the injuries to the head inflicted on the deceased, it was justified in the view it had taken. The learned Judge wound up by stating that it was not a fit case for interference by the High Court and if the Court interferes with the proceedings on any of the grounds urged by the accused, people will lose their confidence in the administration of justice. The High Court directed the Magistrate to proceed with the matter with utmost expedition and in accordance with law.

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7. Accused No.1 challenged this order before this Court by way of this Petition for Special Leave to Appeal. In the Petition for Special Leave, Accused No. 1, the appellant, also referred to the warrant of arrest pending against him and prayed for a stay of further proceedings. On 22.8.2003, this Court while issuing notice also stayed further proceedings before the Chief Judicial Magistrate, pending further orders. It appears that, as of now, neither accused No.1 has been arrested nor the investigation completed. Learned counsel appearing on behalf of the State of West Bengal could only say that

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the investigation has not been completed. Learned counsel for the complaint, on the other hand, submitted that the attitude adopted was one of helping the accused since they were police officers. What is relevant for our purpose is to notice that investigations into the two crimes registered, namely, Case No. 111 under Sections 148, 149, 336 IPC read with Sections 3 and 5 of Explosive Substances Act and Case No. 112, registered on the complaint made by the complainant herein on 11.5.2001, have not been completed.

8. It is true that at the time the complaint was made before the Chief Judicial Magistrate by the complainant on 28.5.2001, there would have been no material before him about the investigation pending on the two cases registered in the Phoolbagan Police Station as Case Nos. 111 and 112. The Magistrate took cognizance of the complaint filed before him after recording the statements of witnesses on 31.5.2001 and issued process and also issued warrant for arrest of the appellant on 16.6.2001. Therefore, at that stage, it is possible, as contended by the learned counsel for the complainant, that there was no occasion for the Chief Judicial Magistrate to consider the applicability of Section 197 of the Code of Criminal Procedure. The occasion had not arisen. In this context, learned counsel for the complainant submitted that the contention sought to be raised by the appellant based on Section 197 of the Code of Criminal Procedure need not be decided at this stage and it may be open to the appellant to raise that objection after he has appeared and while raising his defenses. Learned counsel relied on the observations of the Varadachariar, J. in the decision in *Dr. Hori Ram Singh* v. *Emperor,* (1939) FCR 159. He relied on the passage:

> "As the consent of the Governor, provided for in that Section, is a condition precedent to the institution of proceedings against a public servant, the necessity for such consent cannot be made to depend upon the case which the accused or the defendant may put forward after the proceedings had been instituted, but must be determined with reference to the nature of the allegations made against the public servant, in the suit or criminal proceeding. If these allegations cannot be held to relate to "any act done or purporting to be done in the execution of his duty" by the defendant or the accused "as a servant of the Crown," the consent of the authorities would, *prima facie*, not be necessary for the institution of the proceedings. If, in the course of the trial, all that could be proved should be found to relate only to what he did or purported to do "in the execution of his duty," the proceedings would fail on the merits, unless the Court was satisfied

A that the acts complained of were not done in good faith: S.270(2). Even otherwise, the proceedings would fail for want of the consent of the Governor, if the evidence established only official acts. As the Appellate Court has not pronounced any opinion on the evidence, we are not in a position to say whether on the facts proved, the proceedings could be held to fail on either of the above grounds"

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Learned counsel further relied on the decision in *H.H. B. Gill and Anr.* v. *The King*, (75 Indian Appeals 41) in an appeal from the decision in 1947 F.C. 9 to point out that there was no difference between Section 270 of the Government of India Act dealt with by Varadachariar, J. and Section 197 (1) C of the Code. He also pointed out that the Privy Council had approved the view expressed by Varadachariar, J. in *Dr. Hori Ram Singh* v. *Emperor* (supra). Lord Simonds speaking for the Privy Council stated:

"In the consideration of S.197 much assistance is to be derived from the judgment of the Federal Court in 1939 F.C.R. 159, and in particular D from the careful analysis of previous authorities which is to be found in the opinion of Varadachariar J. Their Lordships, while admitting the cogency of the argument that in the circumstances prevailing in India a large measure of protection from harassing proceedings may be necessary for public officials cannot accede to the view that the relevant words have the scope that has in some cases been given to E them. A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act: nor does a Government medical officer F act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office."

G 9. We find that even if we were accept the submission of learned counsel for the complainant that the stage is not reached for considering whether sanction under Section 197(1) of the Code of Criminal Procedure is required in the present case or not, it would only be postponing the consideration of that question. As we have noticed earlier, in his application filed before the Chief Judicial Magistrate invoking Section 210 of the Code H of Criminal Procedure and praying for a stay of further proceedings, the

appellant, has pleaded that the act was done by him in performance of his duty and in the application filed under Section 482 of the Code of Criminal Procedure before the High Court in addition to reiterating that the alleged offence was committed by him in the course of performance of his duty, he had also invoked Section 197(1) of the Code of Criminal Procedure and had pleaded that the proceedings cannot go on and would be without jurisdiction for want of sanction under Section 197(1) of the Code of Criminal Procedure. Of course, the High Court has taken the view that the complaint would not attract Section 197(1) of the Code and that was the reason for rejecting the prayer of the appellant to quash the proceedings as being without jurisdiction for want of sanction. Learned counsel for the complainant has made a submission that the whole investigation was being delayed and the whole process was being delayed in view of the fact that the accused involved were police personnel and the State was more interested in protecting them than in having justice done. When we take note of this submission, postponing a decision on the applicability or otherwise of Section 197(1) of the Code can only lead to the proceedings being dragged on in the trial Court and a decision by this Court, here and now, would be more appropriate in the circumstances of the case especially when the accused involved are police personnel and the nature of the complaint made is kept in mind.

10. We may first try and understand the scope of Section 197 and the object of it. This Court in *Shreekantiah Ramayya Munipalli* v. *The State of Bombay,* [1955] 1 SCR 1177 explained the scope of Section 197 thus:

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

A proved before it can be established. In the present case, the elements alleged against the second accused are, first, that there was an "entrustment" and/or "dominion"; second, that the entrustment and/or dominion was "in his capacity as a public servant"; third, that there was a "disposal"; and fourth, that the disposal was "dishonest". Now it is evident that the entrustment and/or dominion here were in an B 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 C doing of an official act, but in either event the act was official because the second accused could not dispose of the goods save by the doing of an official act, namely officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done D 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 E other, in the purported discharge of it."

This Court therefore held in that case that Section 197 of the Code of Criminal Procedure applied and sanction was necessary and since there was none, the trial was vitiated from the start.

F 11. Again in *Amrik Singh* v. *The State of PEPSU*, [1955] 1 SCR 1302 this Court after referring to the decisions of the Federal Court and the Privy Council referred to earlier and some other decisions summed up the position thus:

"The result of the authorities may thus be summed up: It is not every G 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 H 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." A

After noticing the facts of that case, their Lordships stated: B

"In our judgment, even when the charge is one of misappropriation by a public servant, whether sanction is required under Section 197(1) will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required." C

Their Lordship then quoted with approval the observations in the decision in *Shreekantiah Ramayya Munipalli* v. *The State of Bombay* (supra). D

12. A Constitution Bench of this Court had occasion to consider the scope of Section 197 of the Code of Criminal Procedure in *Matajog Dobey* v. *H.C. Bhari,* [1955] 2 SCR 925, after holding that Section 197 of the Code of Criminal Procedure was not violative of the fundamental rights conferred on a citizen under Article 14 of the Constitution of India, this Court observed: E

"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. It was argued that Section 197, Criminal Procedure Code vested an absolutely arbitrary power in the government to grant or withhold sanction at their sweet will and pleasure, and the legislature did not lay down or even indicate any guiding principles to control the exercise of the discretion. 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 duties. No one can take such proceedings without such sanction." F G

On the test to be adopted for finding out whether Section 197 of the Code was attracted or not and to ascertain the scope and meaning of that Section, their Lordships stated: H

A "Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". But the difference is only in language and not in substance. The offence alleged to have been committed must have B something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official C duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merit. What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and D requirements of the situation."

After referring to the earlier decisions of the Federal Court, Privy Council and that of this Court, their Lordships summed up the position thus :

"The result of the foregoing discussion is this: There must be a E 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 the performance of his duty."

F Their Lordships then proceeded to consider the stage at which the need for sanction under Section 197 (1) of the Code had to be considered. Their Lordships stated:

"The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or G purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

H

13. In the light of the above decision it does not appear to be necessary to multiply authorities. But we may notice some of them briefly. In *Pukhraj* v. *State of Rajasthan and Anr.*, [1973] 2 SCC 701, this Court held:

> "While the law is well settled the difficulty really arises in applying the law to the fact to 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 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 and 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 described 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."

In *B. Saha & Ors.* v. *M.S. Kochar.*, [1979] 4 SCC 177, this Court held:

> "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."

A In *Bakhshish Singh Brar* v. *Gurmej Kaur and Anr.*, [1987] 4 SCC 663, this Court stated that it was necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, and that is the rationale behind Section 196 and Section 197 of the Code. But it is equally important to emphasize that rights of the citizens should be protected and no excesses B should be permitted. Protection of public officers and public servants functioning in discharge of their official duties and protection of private citizens have to be balanced in each case by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. C In the recent decision in *Rakesh Kumar Mishra* v. *State of Bihar & Ors.*, [2006] 1 SCC 557, this Court after referring to the earlier decisions on the question stated:

> "The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its D 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 the discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned."

E

14. Learned counsel for the complainant argued that want of sanction under Section 197(1) of the Code did not affect the jurisdiction of the Court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate time. We are not in a position to accept this submission. Section 197(1), its opening words and the F object sought to be achieved by it, and the decisions of this Court earlier cited, clearly indicate that a prosecution hit by that provision cannot be launched without the sanction contemplated. It is a condition precedent, as it were , for a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at the inception, but G even at a subsequent stage. We cannot therefore accede to the request to postpone a decision on this question.

15. Coming to the facts of this case, the question is whether the appellant was acting in his official capacity while the alleged offence was committed or was performing a duty in his capacity as a police officer which led to the H offence complained of. That it was the day of election to the State Assembly, that the appellant was in uniform; that the appellant travelled in an official

jeep to the spot, near a polling booth and the offence was committed while he was on the spot, may not by themselves attract Section 197 (1) of the Code. But, as can be seen from the facts disclosed in the counter affidavit filed on behalf of the State based on the entries in the General Diary of the Phoolbagan Police Station, it emerges that on the election day information was received in the Police Station at 1400 hours of some disturbance at a polling booth, that it took a violent turn and clashes between the supporters of two political parties was imminent. It was then that the appellant reached the site of the incident in his official vehicle. It is seen that a case had been registered on the basis of the incidents that took place and a report in this behalf had also been sent to the superiors by the Station House Officer. It is also seen and it is supported by the witnesses examined by the Chief Judicial Magistrate while taking cognizance of the offence that the appellant on reaching the spot had a discussion with the Officer-in-charge who was stationed at the spot and thereafter a lathi charge took place or there was an attack on the husband of the complainant and he met with his death. Obviously, it was part of the duty of the appellant to prevent any breach of law and maintain order on the polling day or to prevent the blocking of voters or prevent what has come to be known as booth capturing. It therefore emerges that the act was done while the officer was performing his duty. That the incident took place near a polling booth on an election day has also to be taken note of. The complainant no doubt has a case that it was a case of the deceased being picked and chosen for illtreatment and he was beaten up by a police constable at the instance of the appellant and the Officer-in-charge of the Phoolbagan Police Station and at their behest. If that complaint were true it will certainly make the action, an offence, leading to further consequences. It is also true as pointed out by the learned counsel for the complainant that the entries in the General Diary remain to be proved. But still, it would be an offence committed during the course of the performance of his duty by the appellant and it would attract Section 197 of the Code. Going by the principle, stated by the Constitution Bench in *Matajog Dobey* (supra), it has to be held that a sanction under Section 197 (1) of the Code of Criminal Procedure is necessary in this case.

16. We may in this context notice the decision in *Rizwan Ahmed Javed Shaikh & Ors.* v. *Jammal Patel & Ors.*, [2001] 5 SCC 7. This Court was dealing with officers who were brought within the protective umbrella of Section 197 of the Code by a notification issued under Section 197(3) thereof. Cognizance had been taken of an offence under Sections 220 and 342 of the Indian Penal Code and Sections 147 and 148 of the Bombay Police Act. The

A gravamen of the charge was the failure on the part of the accused police officers to produce the complainants before a magistrate within 24 hrs. of their arrest for alleged offences under the Indian Penal Code. The police officers having claimed the protection of Section 197(1) of the Code, this Court after referring to the earlier decisions held"

B "The real test to be applied to attract the applicability of Section 197(3) is whether the act which is done by a public officer and is alleged to constitute an offence was done by the public officer whilst acting in his official capacity though what he did was neither his duty nor his right to do as such public officer. The act complained of may be in exercise of the duty or in the absence of such duty or in
C dereliction of the duty, if the act complained of is done while acting as a public officer and in the course of the same transaction in which the official duty was performed or purported to be performed, the public officer would be protected."

D Going by the above test it has to be held that Section 197(1) of the Code is attracted to this case.

17. 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
E 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 by-passed 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
F 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
G 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
H 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 learned counsel for the complainant that this is an eminently fit case for grant of such sanction.

18. We thus allow this appeal and setting aside the order of the High Court quash the complaint only on the ground of want of sanction under Section 197(1) of the Code of Criminal Procedure. The observations herein, however, shall not prejudice the rights of the complainant in any prosecution after the requirements of Section 197(1) of the Code of Criminal Procedure are complied with.

C.K. THAKKER, J. Leave granted.

I have had the benefit of going through the judgment prepared by my learned brother P.K. Balasubramanyan, J. I express my inability to agree with the reasons recorded and conclusions arrived at by him. I, therefore, consider it appropriate to deal with the matter independently.

The relevant facts as stated in the judgment of the High Court of Calcutta impugned in the present appeal are that on May 10, 2001 general election of the State Assembly of the West Bengal was held. One Rabindra Nath Das @ Topi Das ('deceased' for short), husband of Mrs. Sadhna Das ('complainant' for short) was supporting a particular political party. He was engaged in distributing food packets to the polling agents at Subhas Sarobar (Baliaghata Lake) constituency. It was the case of the complainant that when her husband left the home on May 10, 2001, he stated that he would be coming for taking lunch. According to the complainant, however, her husband did not come. When she was returning after casting her vote, she saw a Tata Sumo vehicle and one Anath Das of the locality inside the vehicle. When she asked the people who gathered over there as to what had happened, she was informed that Topi Das had become unconscious due to beating by police on his head and he was taken to hospital. The complainant, therefore, immediately proceeded to hospital. She found her younger brother-in-law Laxman Das amongst the crowd. On being asked, she was told that her husband had died. She learnt that her husband was supplying food packets at the polling booth. At that time, some police officers came there and they beat her husband. When her husband left the place, police men chased him towards the lake side. Her husband was not knowing swimming and he stated to the police personnel that he did not know swimming and requested them not to beat him. But the police officers did not pay any heed to the request and continued

A beating. The husband of the complainant fell down, became unconscious, was taken to the hospital but was declared dead there. She, therefore, informed the Deputy Commissioner of Police on May 11, 2001 that her husband was beaten to death by police and demanded "stern punishment" to persons responsible for killing him. On the next day, i.e. on May 12, 2001, the Deputy Commissioner of Police, registered Phoolbagan P.S. Case No.112, B for an offence punishable under Section 304 Indian Penal Code (IPC) against unknown police officers. It appears that for a considerable long period, nothing was done in the matter and no action was taken on the basis of complaint made by the complainant. She, therefore, filed a private complaint in the Court of Chief Judicial Magistrate, Alipore, Kolkata on May 28, 2001 being C case No.C-1107 of 2001 against the appellant and two other police officers for offences punishable under Sections 302, 201, 109 and 120B of IPC. It was stated in the said complaint that the husband of the complainant was assaulted and severely beaten by police personnel which resulted in his death and thereby the accused had committed the offences as mentioned in the complaint and prayed for taking cognizance, to issue process against the D accused and to pass appropriate orders in accordance with law. She had also submitted a list of witnesses.

Between May 31, and June 16, 2001, the learned Magistrate, following the provisions of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') recorded statements of the complainant and the witnesses E produced by her. On the basis of the said material, the learned Magistrate took cognizance of the offences. On June 16, 2001, the learned Magistrate issued non-bailable warrant against the accused persons including the appellant herein and fixed July 10, 2001 as returnable date. Meanwhile, on June 30, 2001, the accused preferred an application under Section 210 of the Code F stating therein that a complaint was filed by the complainant on May 12, 2001 which had been registered as PS Case No.112 of 2001 for an offence punishable under Section 304 IPC by Phoolbagan Police Station and proceedings were initiated. It was also stated that thereafter Fax-message was sent to the Joint Commissioner of Police to investigate the case under Section G 302 which was treated as FIR. It was, therefore, prayed that the complaint dated May 28, 2001 be stayed.

It may also be stated that the accused moved the High Court for grant of anticipatory bail under Section 438 of the Code. The application, however, was rejected by the High Court on June 20, 2003. The order passed by the H High Court was challenged by filing Special Leave Petition in this Court which

was also dismissed by this Court on July 28, 2003. A

The accused then filed a petition under Section 482 of the Code for quashing of proceedings, *inter alia*, contending that the alleged offence had been committed by them "while acting or purporting to act" in the discharge of their official duties and no cognizance could be taken by the Court except with the previous sanction of the State Government. Since no such sanction B was obtained before filing the complaint, the complaint was not maintainable at law and was liable to be dismissed only on that ground.

The High Court, by the impugned order, dismissed the petition observing that it was a case of 'merciless beating' by police officer causing death of a C person which could not be said to be an act in the discharge of official duty. Several injuries were found on the person of the deceased and according to the medical opinion, those injuries were *ante mortem* and homicidal in nature. The postmortem report clearly indicated the nature and extent of the injuries inflicted by the accused on the victim and the witnesses had given vivid description of the offence committed by the accused. In the facts and D circumstances, therefore, it could not be said to be a case covered by Section 197 of the Code and hence the application was liable to be dismissed. Accordingly, the application was dismissed on July 7, 2003. The said order is challenged by the appellant.

On August 22, 2003, notice was issued and "stay of further proceedings E pending before the Chief Judicial Magistrate, Alipore, Calcutta" was granted by this Court in the meanwhile. Affidavits and counter affidavits were thereafter filed.

We have heard learned counsel for the parties. F

Mr. K.T.S. Tulsi, Senior Advocate, appearing for the appellant, contended that the High Court has committed an error of law in holding that the provisions of Section 197 of the Code were not attracted. According to him, the appellant was a police officer and he was on duty on May 10, 2001. At about 2 p.m., a message was received from Assistant Commissioner of G Police regarding disturbance and rioting between two rival political parties at Subhash Sarobar and the case was registered as Case No. 111 of 2001 for offences punishable under Sections 148, 149 and 336 IPC read with Sections 3 & 5 of Explosive Substances Act, 1908 against the deceased and others and investigation started. The appellant, along with other police officers, rushed to the spot in order to disperse the rioting mob and restore law and order H

A situation. During the said incident of dispersing mob and preventing rioting, the deceased was injured and fell into water, drowned in the lake and declared dead on being taken to the hospital. According to Mr. Tulsi, all acts were committed by the appellant while exercising powers, discharging duties and performing functions as police officer and as such the provisions of Section 197 of the Code were clearly attracted. It was submitted by Mr. Tulsi that B admittedly, no sanction was obtained from the Government before instituting proceedings against the appellant. The proceedings were, therefore, not tenable. The learned Magistrate, therefore, was wrong in taking cognizance, in issuing non-bailable warrant and proceeding with the case. Mr. Tulsi submitted that absence of sanction as required by Section 197 goes to the root of the matter C and no proceedings could be initiated in absence of such sanction and the proceedings are required to be dropped.

Mr. Tulsi also submitted that as is clear, the complainant had filed a complaint on May 11, 2001 and in the said complaint it was expressly stated that her husband had met with death due to beating by police officers. An D entry was made to that effect and a case was registered as PS Case No.112 of 2001 for an offence punishable under Section 304 IPC by Phoolbagan Police Station on May 12, 2001. Subsequently, even Section 302 IPC was added. Considering that fact also, a private complaint instituted by the complainant in the Court of the Chief Judicial Magistrate on May 28, 2001 E for offences punishable under Sections 302, 201, 109 and 120B IPC was required to be stayed under Section 210 of the Code which provides for procedure to be followed in such cases.

Mr. Pradip Kumar Ghosh, learned senior counsel for the complainant, on the other hand, supported the action taken by the Chief Judicial Magistrate F and the order passed by the High Court. He submitted that the acts committed by the appellant and other police officers were totally illegal, unlawful and in violation of law of the land. The deceased was chased, assaulted, severely beaten and killed by the appellant and other police officials. Section 197 has no application in such cases. According to the learned counsel, the High Court has considered the entire material in its proper perspective and held G that in the facts and circumstances of the case, Section 197 could not be invoked. The said order cannot be said to be illegal or contrary to law.

The counsel also submitted that no action whatsoever has been taken on the basis of the complaint filed by the complainant on May 11, 2001 and hence Section 210 was not attracted. The learned Magistrate, therefore, was H

wholly justified in entertaining the complaint filed by the complainant, in taking cognizance and issuing arrest warrants. The counsel also submitted that in view of the fact that the action of the appellant and police officers was totally illegal and an innocent person was killed that non bailable warrants were issued. The said action was challenged by the accused but the High Court as well as this Court did not interfere with the order and dismissed the application for anticipatory bail. The counsel also made grievance that the State and the police force of the respondent State were virtually supporting and illegally helping the appellant and other police officials which is clear from the fact that even though non bailable warrant was issued against the accused persons in June, 2001 and the said action was confirmed by the High Court and also by this Court as early as in 2003, till today, the appellant has not been arrested. He, therefore, submitted that no case has been made out for interference by this Court and the appeal deserves to be dismissed.

Mr. Avijit Bhattacharjee, learned counsel appearing for the State relied upon the affidavit filed on behalf of the State.

The questions which arise for our consideration are, *firstly*, whether in the facts and circumstances of the case, Section 197 of the Code is attracted and sanction as required by that section is *sine qua non* for prosecuting the appellant and other police officers and whether the Chief Judicial Magistrate was justified in taking cognizance of the complaint filed by the complainant and proceeding with the complaint, and *secondly*, whether the case is covered by Section 210 of the Code and the private complaint filed by the complainant in the Court of Chief Judicial Magistrate on May 28, 2001 against the accused persons for offences punishable under Sections 302, 201, 109 and 120B IPC could be proceeded with or required to be stayed?

Before I deal with the material placed on record, it would be appropriate to consider the legal position. Section 197 of the Code provides for sanction of prosecution of certain public servants. The relevant part thereof reads thus:

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 —

A (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
B connection with the affairs of a State, of the State Government.

... ...

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which,
C and the offence or offences or 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.

It is the case of the appellant that whatever he has done has done "while acting or purporting to act in the discharge of his official duty" and
D Section 197 bars a Court from taking cognizance of such offence except with the previous sanction of the State Government. Since there is no sanction of the State Government, the Chief Judicial Magistrate could not have taken cognizance of the case and the complaint was liable to be dismissed.

But the case of the complainant is that there was no need or necessity
E to take sanction of the State Government as the appellant and other police officers had deliberately, intentionally and willfully caused death of her husband. The said act was not done in discharge of duty or even under colour of duty but it has been done by them by taking undue advantage of their position. The case was of murder, pure and simple. The learned Magistrate
F took into account all relevant facts and material placed before him and held that the sanction was not necessary. The High Court was, therefore, justified in dismissing the application. So far as the provisions of the Section 197 are concerned, they came up for judicial interpretation in several cases. One of the leading cases which has been referred to in several decisions thereafter was of *Dr. Hori Ram Singh* v. *Emperor*, (1939) FCR 159 : AIR (1939) FC
G 43. Their Lordships of the Federal Court in *Dr. Hori Ram Singh* were called upon to consider Section 270 of the Government of India Act, 1935 which was similar to Section 197 of the present Code. Sulaiman, J., interpreting the said section, observed that the question of good faith or bad faith would not strictly arise in interpreting the provision inasmuch as the words used in the
H section were not only "any act done in the execution of his duty" but also

"any act purporting to be done in the execution of duty". It was, therefore, held that when the act is not done in the execution of the duty, but is purported to be done in the execution of the duty, it would be covered.

The learned Judge stated; "Obviously the section does not mean that the very act which is the gravamen of the charge and constitutes the offence should be official duty of the servant of the Crown. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The words as used in the Section are not "in respect of any official duty" but "in respect of any act done or purporting to be done in the execution of his duty". The two expressions are obviously not identical. 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 the execution of the duty. The reference is obviously to an offence committed in the course of an action, which is taken or purports to be taken in compliance with an official duty, and is in fact connected with it. The test appears to be not that the offence is capable of being committed only by a public servant and not by any one else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his 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 is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction. If the act complained of is an offence, it must necessarily be not an execution of duty, but a dereliction of it. What is necessary is that the offence must be in respect of an act done or purported to be done in execution of duty, that is, in the discharge of an official duty. It must purport to be done in the official capacity with which he pretends to be clothed at the time, that is to say under the cloak of an ostensibly official act, though of course, the offence would really amount to a breach of duty. An act cannot purport to be done in execution of duty unless the offender professes to be acting in pursuance of his official duty and means to convey to the mind of another, the impression that he is so acting."

It was, however, stated—

"The section is not intended to apply to acts done purely in a private capacity by a public servant. It must have been ostensibly done by him in his official capacity in execution of his duty, which would not necessarily be the case merely because it was done at a time when

A *he held such office, nor even necessarily because he was engaged in his official business at the time.* For instance, if a public servant accepts as a reward a bribe in his office while actually engaged in some official work, he is not accepting it even in his official capacity, much less in the execution of any official duty, although it is quite certain that he could never have been able to take the bribe unless he were the official in charge of some official work. He does not even pretend to the person who offers the bribe that he is acting in the discharge of his official duty, but merely uses his official position to obtain the illegal gratification." (emphasis supplied)

C In the concurring opinion, Varadachariar, J. stated—

"It only remains to deal with the arguments urged on the one side or the other as to the test to be applied in determining whether or not the act complained of is one "purporting to be done in execution of his duty" as a public servant. I would observe at the outset that the question is substantially one of fact, to be determined with reference to the act complained of and the attendant circumstances; *it seems neither useful nor desirable to paraphrase the language of the section in attempting to lay down hard and fast tests.*" (emphasis supplied)

In *H.H.B. Gill & Anr.* v. *King*, 75 IA 41:AIR (1948) PC 128, the E Judicial Committee of the Privy Council had an occasion to deal with the provisions of Section 197 of the Code in juxtaposition of Section 270 of the Government of India Act, 1935. Referring to *Dr. Hori Ram Singh* and applying the ratio laid down therein, their Lordships observed that a public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. The Judicial F Committee proceeded to state that in considering Section 197, 'much assistance' could be derived from the Judgment of *Dr. Hori Ram Singh.*

It then formulated the test thus:

"A public servant can only be said to act or to purport to act in the G *discharge of his official duty, if his act is such as to lie within the scope of his official duty.* Thus, a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act; nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be H

such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office." (emphasis supplied) A

Shreekantiah Ramayya Munipalli & Anr. v. *State of Bombay*, [1955] 1 SCR (1177) : AIR (1955) SC 287 was probably the first leading decision of this Court on the point. Keeping in view the underlying object behind Section 197 and referring to *Dr. Hori Ram Singh* as also *H.H.B. Gill*, Vivian Bose, J. stated: B

"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 not 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.* (emphasis supplied) C

Again, in *Amrik Singh* v. *State of Pepsu*, [1955] 1 SCR 1302 : AIR 1955 SC 309], this Court held that it is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code, nor every act done by him while he is actually engaged in the performance of his official duties, so that, if questioned, it could be claimed to have been done by virtue of the office. It is only when the act complained of is directly connected with his official duties that sanction is necessary. D E

Speaking for the Court, Venkatarama Ayyar, J. referring to the relevant decisions on the point, formulated the principle:

"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." F G H

A A reference may be made to a decision of the Constitution Bench in *Matajog Dobey* v. *H.C. Bhari,* [1955] 2 SCR 925 : AIR (1956) SC 44. Holding Section 197 of the Code constitutional and not discriminatory and violative of Article 14 of the Constitution, the Court stated that the primary object of Section 197 was to protect public servants from harassment in the B discharge of their official duties. Delivering the judgment for the Bench, Chandrasekhara Aiyar, J. said:

> "The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under section 197, C unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. *What we must find out* D *is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.*" (emphasis supplied)

E The Bench also considered the question that if such sanction is necessary at any stage, it should be obtained at that stage. It was also indicated that such question may arise "at any stage of the proceeding". The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of the official duty but the facts subsequently coming to light on a police report or judicial inquiry or even in the course of the F prosecution evidence at the trial, may establish the necessity for sanction. The Court, therefore, concluded: "Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

G In *P. Arulswami* v. *State of Madras,* [1967] 1 SCR 201 : AIR (1967) SC 776], their Lordships stated:- "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 H in excess of it that the protection is claimable.

In *Pukhraj* v. *State of Rajasthan & Anr.*, [1973] 2 SCC 701 : 1974 (1) SCR 551], after considering several cases on the point, the Court observed that though the principle is well settled, the real difficulty lies in applying it to the factual situation.

The Court observed —

"While the law is well settled the difficulty really arises in applying the law to the fact to 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 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 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.* (emphasis supplied)

In *B. Saha & Ors.* v. *M.S. Kochar*, [1979] 4 SCC 177, this Court stated that for the application of Section 197 of the Code, there must be direct and reasonable nexus between the offence committed and the discharge of official duty. It may happen that a particular act might have been committed by a public servant in the discharge of his duty or purported to be in discharge of his duty but he might have acted illegally and unlawfully if the other act complained of would be outside the ambit of Section 197 of the Code. In *B. Saha*, the Court observed that though the initial action of seizure of the goods by the public servant was an act committed by him while acting in discharge of his official duty, subsequent act of dishonest misappropriation or conversion of goods could not be said to be in discharge or purported discharge of duty. For that act, he cannot get protection of Section 197 of the Code. The Court also observed that the question of sanction under Section 197 of the Code can be raised and considered at any stage of the proceedings. Moreover, while considering the question whether or not sanction for prosecution was required, it is not necessary for the Court to confine itself to the allegation in the complaint alone and it can take into account all the material on record at that time when the question is raised and falls for consideration.

A In *Bakhshish Singh Brar* v. *Gurmej Kaur & Anr.*, [1987] 4 SCC 663, this Court held that when police officers were accused of causing grievous injuries and death while conducting raid and search, it could not be said that they were acting in purported discharge of their official duty but if while discharging duty, they exceeded the limits of such official capacity, sanction under Section 197 of the Code would be necessary. While insisting on the need and necessity B to protect public servants, the Court also emphasized the protection of rights of citizens.

The Court stated —

> C "It is necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, that is the rationale behind Section 196 and Section 197 of the CrPC. But it is equally important to emphasise that rights of the citizens should be protected and no excesses should be permitted. "Encounter death" has become too common. In the D facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. It is true that Section 196 states E that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at F the preliminary stage because that will cause great damaged to the evidence."

In *P.K. Pradhan* v. *State of Sikkim*, [2001] 6 SCC 704, after referring to relevant case law on the point, it was observed that different tests have been laid down to ascertain the scope and meaning of the relevant words G occurring in Section 197 "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". It was then stated that the offence alleged to have been committed must have something to do, or must relate in some manner, with the discharge of official duty of a public servant. No question of sanction would arise under Section 197, unless the act complained of is an offence; the only point for determination H

is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as that question would arise only at a later stage when the trial proceeds on the merits. What a court must consider is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty. If the answer to the said question is in affirmative, Section 197 will be attracted, but not otherwise. This Court reiterated that the question as to applicability of Section 197 of the Code can be raised at any stage of the proceedings. In order to come to the conclusion, whether the claim of the accused that the act he had committed was in the course of performance of his duty was a reasonable one and neither pretended nor fanciful can be examined during the course of trial by giving opportunity to the defence to establish it and the question of sanction would be left to be decided in the main judgment which may be delivered upon at the conclusion of the trial.

In *State of Orissa* v. *Ganesh Chandra Jew*, [2004] 8 SCC 40, it was held that the expression "any offence alleged to have been committed by public servant while acting or purporting to act in the discharge of his official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should fall within the scope and range of his official duty. It was then observed that the test is whether omission or neglect to do that act would be brought on a public servant, the charge of dereliction of his official duty. The protection is available only when the alleged act done by the public servant is reasonable, connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act [vide *S.K. Zutshi* v. *Bimal Debnath*, [2004] 8 SCC 31].

In *K. Kalimuthu* v. *State by DSP*, [2005] 4 SCC 512, it was stated that the protection given under Section 197 of the Code 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. But the said protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the

A discharge of his official duty and is not merely a cloak for doing the objectionable act.

It was, therefore, observed —

"Before Section 197 can be invoked, it must be shown that the official
B 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
C 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
D 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
E there was every connection with the act complained of and the official duty of the public servant. (emphasis supplied)

Recently, in *Rakesh Kumar Mishra* v. *State of Bihar & Ors.*, [2006] 1 SCC 557, this Court restated the object behind enacting Section 197 of the
F Code and also prerequisites for application thereof.

The Court stated—

"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
G 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 it chooses
H 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 from 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." (Emphasis supplied)

From the aforesaid decisions, in my opinion, the law appears to be well settled. The primary object of the Legislature behind Section 197 of the Code is to protect public officers who have acted in discharge of their duties or purported to act in discharge of such duties. But, it is equally well settled that the act said to have been committed by public officer must have reasonable connection with the duty sought to be discharged by such public officer. If

A the act complained of has no nexus, reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an offence, he cannot get shelter under Section 197 of the Code. In other words, protection afforded by the said section is qualified and conditional.

B Mr. Tulsi, no doubt, submitted that the appellant was a police officer. He was on duty. He had received a message about rioting and law and order situation at Baliaghata. He, therefore, had gone to the spot pursuant to the said message, in police uniform, in police jeep to deal with the situation. All the ingredients of Section 197 of the Code were thus satisfied and the High C Court was wrong in not applying the said provision.

I am unable to agree with Mr. Tulsi. In my judgment, it is precisely in such cases that the Court is called upon to consider whether the public servant was acting or purporting to act in discharge of his duty or it was merely a cloak for doing illegal act under the excuse of his status as a public servant D and by taking undue advantage of his position, he was committing an offence or an unlawful act. In such situations, when the question comes up for consideration before a Court of law as to the applicability or otherwise of Section 197 of the Code, it is not only the *power* but the *duty* of the Court to apply its mind to the fact-situation before it. It should ensure that on the one hand, the public servant is protected if the case is covered by Section E 197 of the Code and on the other hand, appropriate action would be allowed to be taken if the provision is not attracted and under the guise of his position as public servant, he is trying to take undue advantage.

In the instant case, from the material which has been placed on record, F it is amply clear that the appellant and other police officers had acted illegally, unlawfully and highhandedly. In the complaint, it was stated by the widow of deceased Topi Das that the accused chased her husband and assaulted him by causing several injuries which resulted in his death. But, apart from what is stated in the complaint, the learned Chief Judicial Magistrate had recorded statements of witnesses mentioned in the complaint. The learned counsel for G the first respondent-complainant, drew our attention to those statements who were eye-witnesses. It was stated by them that the deceased had not indulged in any illegal activity. He had not done any unlawful act. He had no weapon with him. He was distributing food packets at the polling booth of a particular political party. He was assaulted and beaten by accused persons who were H police officers. When the deceased left the place, the police officers chased

him and continued to beat him. When deceased reached near a lake, he requested the police officers not to beat him. He also stated that he did not know how to swim and prayed to leave him. But the police officers did not pay any heed to his request and continued beating, which resulted in his death.

Dr. Rabindra Basu, who performed post mortem examination, stated that he found the following injuries on the person of Topi Das:

"1. One abrasion with a reddish crust 1.4 inches x .3 inch more or less transversely placed across left side of forehead lower part being placed 1 inch above lateral 1/3rd left eye brow.

2. One abrasion .4 inch x .3 inch with reddish crust placed 1 inch above medical end of left eyebrow and ½ inch lateral to midline.

3. One linear abrasion .6 inch x .1 inch with reddish crust over lateral aspect of uppermost part of left forearm.

4. One abrasion ½ x .1 inch with reddish crust over postern lateral aspect of upper 1/3rd of left forearm.

5. One abrasion ½ x .1 inch over dorsum of left hand.

6. One linear abrasion .4 inch x .1 inch with reddish rust over dorsal aspect of web between index and middle finger."

On internal examination, he noticed the following injuries:

1. One heomotoma in the scalp tissue 3 ½ inches x 2 inches over right temporal region.

2. One heamotoma in the scalp tissue over vault of the skull 4 inch x .4 inch over parieto occipitial region, of scalp.

3. One heamotoma in the scalp tissue over vault of the skull 4 inch x 3 inches involving left parieto topper region.

4. One heamotoma 2½ inches x 1½ inch over left frontal region (forehead).

5. Exgradural Haemorrhage over vault of the brain involving posterior aspects of both partietal lobes.

6. Thin layscror sub-aural haemorrhage all over both the cerebral homlsphered inching under surfaced.

A He then stated:

"All the internal organs were congested. Laryenz and trachnoes was found congested and the lumen was filled up with shaving lathery froth with and sand seen even below bifunction of trachoea. Lungs were voluminous, doughy filled and on section and squeezing
B occupious amount of frothy blood mixed fluid come out. Heart showgrade-II atteroma at the root of aorta.

On the basis of my findings I have the following opinion: "*Death was due to the effects of head injuries associated with drawing ante-mortem and homicidal in nature.*

C

The injuries which I found are consisted with a trauma caused by blunt weapon such as Lathi." (Emphasis supplied)

The High Court, in my judgment, considered this aspect in its proper perspective and was wholly justified in observing that "it was a merciless
D beating by a police officer" causing death of a person which could not be said to be an act in discharge of official duty. The High Court was also right in stating that postmortem report clearly indicated the nature and extent of injuries on the victim. Other witnesses had given vivid description of the offence committed by the accused persons. The said finding, which is supported by material on record, cannot be said to be based on 'no evidence'
E or otherwise perverse, nor it can be concluded that an error of law has been committed by the High Court which requires to be corrected by this Court in the exercise of discretionary jurisdiction under Article 136 of the Constitution. Hence, in my opinion, no interference is called for against the said order.

F In my view, even Section 210 of the Code has no application to the facts of the case on hand. Section 210 requires procedure to be followed when there is a complaint case and police investigation in respect of the same offence and reads thus:

210 Procedure to be followed when there is a complaint case and
G **police investigation in respect of the same offence.**

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the
H offence which is the subject matter of the inquiry or trial held by him,

the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation. A

(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence to taken by the Magistrate against any person who an accused in the complaint case, the Magistrate shall inquire together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. B

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him in accordance with the provision of this code. C

Bare reading of the above provision makes it clear that during an inquiry or trial relating to a complaint case, if it is brought to the notice of the Magistrate that an investigation by the police is in progress in respect of the same offence, he shall stay the proceedings of the complaint case and call for the record of the police officer conducting the investigation. D

The object of enacting Section 210 of the Code is three fold:

(i) it is intended to ensure that private complaints do not interfere with the course of justice; E

(ii) it prevents harassment to the accused twice; and

(iii) it obviates anomalies which might arise from taking cognizance of the same offence more than once. F

The Joint Committee of Parliament observed:

"It has been brought to the notice of the Committee that sometimes when serious case is under investigation by the police, some of the persons file complaint and quickly get an order of acquittal either by cancellation or otherwise. Thereupon the investigation of the case becomes infructuous leading to miscarriage of justice in some cases. To avoid this, the Committee has provided that where a complaint is filed and the Magistrate has information that the police is also investigating the same offence, the Magistrate shall stay the complaint case. If the police report (under Section 173) is received in the case, G H

A the Magistrate should try together the complaint case and the case arising out of the police report. But if no such case is received the Magistrate would be free to dispose of the complaint case. *This new provision is intended to secure that private complainants do not interfere with the course of justice.*" (emphasis supplied)

B It is thus clear that before Section 210 can be invoked, the following conditions must be satisfied :

(i) There must be a complaint pending for inquiry or trial;

(ii) Investigation by the police must be in progress in relation to the same offence;

C

(iii) A report must have been made by the police officer under Section 173; and

(iv) The magistrate must have taken cognizance of an offence against a person who is accused in the complaint case.

D In the impugned order passed by the High Court, no such contention appears to have been raised by the appellant. On the basis of the complaint filed by the complainant and on being satisfied on the material placed on record, the learned Chief Judicial Magistrate, Alipore had proceeded with the case which cannot be said to be illegal.

E It may also be stated here that the High Court in its order, dated June 20, 2003 considered this contention and observed that Section 210 of the Code could not arrest the proceedings initiated by the complainant, since the 'basic tenor of the two cases were different.' Relying on the decision of this Court in *Harjinder Singh* v. *State of Punjab*, AIR (1985) SC 404, it was F submitted that both the cases could not be clubbed together since the prosecution version was quite different in those cases. It may be stated that Special Leave Petition against the order of the High Court was dismissed by this Court on July 28, 2003. Even this ground, therefore, cannot take the case of the appellant anywhere.

G I am constrained to observe here that there is considerable force in the allegation of the learned counsel for the complainant that the State agency had shown partisan attitude and favoured the appellant. This is clear from the fact that though the application of the appellant for anticipatory bail was rejected by the High Court as well as by this Court before about three years, H the appellant was never arrested by the police.

For the foregoing reasons, in my opinion, the order passed by the High Court is in consonance with well settled principles of law and does not deserve interference under Article 136 of the Constitution. The appeal, therefore, deserves to be dismissed and accordingly dismissed. Interim stay granted earlier stands vacated.

It may be stated at this stage that the incident is of May, 2001 and about five years have passed. It is, therefore, necessary that the proceedings must be concluded as expeditiously as possible. The learned Chief Judicial Magistrate, Alipore is, therefore, directed to proceed with the case with utmost expedition as directed by the High Court.

Before parting with the matter, I may clarify that all the observations made by me hereinabove have been only for the limited purpose of deciding the controversy in connection with the applicability or otherwise of Sections 197 and 210 of the Code and I may not be understood to have expressed any opinion one way or the other on the merits of the case. As and when the matter comes before an appropriate Court, it may be decided strictly on its own merits without being influenced/inhibited by the above observations.

For the foregoing reasons, the appeal deserves to be dismissed and it is accordingly dismissed.

V.S. Appeal allowed.