A URMILA DEVI

v.

YUDHVIR SINGH

(Criminal Appeal No. 1822 of 2013)

B OCTOBER 23, 2013

[T.S. THAKUR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Criminal Trial – Summoning order – Nature of – How to C *construe order passed by a Magistrate in exercise of its power u/ss. 200 and 202 CrPC when it decides to issue process as against the accused – Whether such an order could be the subject matter of challenge by way of revision u/s.397 CrPC – Held: The order issued by the Magistrate deciding to* D *summon an accused in exercise of his power u/ss.200 to 204 CrPC would be an order of intermediatory or quasi-final in nature and not interlocutory in nature – In view of the said position viz., such an order is intermediatory order or quasi-final order, the revisionary jurisdiction provided u/s.397 CrPC,* E *either with the District Court or with the High Court can be worked out by the aggrieved party – Such an order of a Magistrate deciding to issue process or summons to an accused in exercise of his power u/ss.200 to 204 CrPC, can always be subject matter of challenge under the inherent* F *jurisdiction of the High Court u/s.482 CrPC – Code of Criminal Procedure, 1973 – ss.200 to 204, 397 and 482.*

Code of Criminal Procedure, 1973 – s.397 – Order of Magistrate, directing issuance of summons – Challenge to – Scope of power and jurisdiction of the Revisional court G *exercising jurisdiction u/s.397 CrPC – Held: Revisional jurisdiction u/s.397 CrPC is available to the aggrieved party in challenging the order of the Magistrate, directing issuance of summons – Revision.*

H

Code of Criminal Procedure, 1973 – ss.197, 198 and 53, 54 – Sanction for prosecution — Protection of s.197 CrPC if available – Test of direct and reasonable connection between official duty of the accused and the offences allegedly committed – According to appellant, based on a complaint preferred by 'M' alleging that the appellant and 'R' were living in an illicit relationship, the respondent Executive Magistrate/ SDM, acted without authority of law and without any lawful justification, harassed the complainant-appellant, violated her right to privacy, and subjected her to an unwarranted public humiliation – Whether offences allegedly committed by the respondent were committed while he was 'acting or purporting to act in the discharge of his official duty'; and whether sanction u/s. 197 CrPC was necessary for prosecuting him – Held: The offences alleged by 'M' against the appellant, if to be taken cognizance of, could have fallen under any of the offences falling under Chapter XX of IPC – For all or any of the offences falling in Chapter XX, an aggrieved person can be either the husband or the wife and none else other than those falling under the proviso to sub-section (2) of s.198 CrPC – 'M' not an aggrieved person falling u/s.198(1) CrPC or governed by proviso to s.198(2) CrPC – Therefore, it cannot be held that respondent validly exercised his authority as Executive Magistrate/SDM when he acted on the complaint of 'M' – No scope to bring the action of respondent u/s.198 CrPC – Further, no scope for respondent to contend that he acted by virtue of the authority vested in him u/s.107 CrPC – Also there was no scope for anyone, much less for the respondent in the capacity of an Executive Magistrate to order for forcible medical examination of appellant and 'R' prior to their arrest and in absence of any alleged offence requiring such medical examination – Even assuming the allegation of 'M' was true on its face value, respondent-SDM could not have taken a decision to barge into the house of appellant-lady, that too at the odd hours of 10 pm accompanied by a posse of police officers under the guise of ascertaining the

truthfulness or otherwise of such a complaint and for that purpose engage the services of two cameramen also with video cameras – Such behaviour of respondent, if ultimately found to be true, can only be held to be a high handed one bordering on indecency of the highest order, wholly abusing his status as SDM – Since none of the actions alleged against the respondent by the appellant can be held to be one in which he acted in his capacity as the Executive Magistrate, invocation of s.197 CrPC wholly uncalled for – Plea of respondent that prosecution barred u/s.197 CrPC rejected – Resultantly, summons issued by trial Court and the order by which the Magistrate declined to recall the issuance of summons, restored – Penal Code, 1860 – Chapter XX; ss. 323, 354, 389, 452, 458, 500 and 506 r/w ss.34 and 120-B.

Words and Phrases – Expression "official duty" – Meaning of.

The appellant filed complaint against the respondent, a Sub-Divisional Magistrate, alleging that he had threatened the appellant and 'R' to withdraw the complaint filed by them earlier as against 'M' under Section 500 IPC. According to the appellant, based on a complaint preferred by 'M' alleging that the appellant and 'R' were living in an illicit relationship, the respondent directed the Tehsildar to enquire into the matter and also directed the DSP to conduct special investigation. The respondent also allegedly accompanied the investigation team alongwith two other accused persons with video cameras and carried out search in the house of the appellant. It was further alleged that the respondent threatened the appellant and 'R' to withdraw the case filed against 'M'; that 'R' was made to strip off his clothes before others and thereby he was humiliated and that both the appellant and 'R' were forced to undergo a medical examination in the civil hospital against their will.

The respondent and the other accused persons were summoned by the Judicial Magistrate to face trial for offences under Sections 323, 354, 389, 452, 458, 500 and 506, read with Sections 34 and 120-B of IPC. The respondent filed application to recall the summoning order. The application was dismissed by the Judicial Magistrate. The respondent preferred revision before the Sessions Judge, who held that in view of the bar enjoined under Section 197 CrPC, the respondent, a Sub-Divisional Magistrate, could not be summoned to face the trial. The High Court declined to interfere with the order of the Sessions Judge.

In the instant appeal, the appellant *inter alia* contended that the order of the Judicial Magistrate being an interim order, there was no jurisdiction in the Sessions Judge to entertain the revision under Section 397 CrPC; and if at all the respondent was aggrieved, he could have only approached the High Court under Section 482 CrPC. The appellant further contended that none of the acts complained of against the respondent would amount to exercise of any powers in his official capacity as SDM and, therefore, he could not have taken umbrage under Section 197 CrPC; and therefore, the order of the Sessions Judge and the confirmation of the same by the High Court in having held that for want of sanction under Section 197 Cr.P.C the whole complaint of the appellant was not maintainable was thoroughly illegal and liable to be set aside.

The following questions therefore arose for consideration before this Court: 1) whether the order issuing summons can be construed as an interim order or an intermediate order and 2) what is the scope of challenging such an order by way of revision under Section 397 CrPC; 3) whether the offences allegedly committed by the respondent public servant were

A committed while he was 'acting or purporting to act in the discharge of his official duty'; and 4) whether sanction under Section 197 CrPC was necessary for prosecuting the respondent public servant.

B Allowing the appeal with costs payable by the respondent to the appellant, the Court

Per Kalifulla, J.

HELD:1. The order issued by the Magistrate deciding C to summon an accused in exercise of his power under Sections 200 to 204 Cr.P.C. would be an order of intermediatory or quasi-final in nature and not interlocutory in nature. In view of the said position viz., such an order is intermediatory order or quasi-final order, D the revisionary jurisdiction provided under Section 397, either with the District Court or with the High Court can be worked out by the aggrieved party. Such an order of a Magistrate deciding to issue process or summons to an accused in exercise of his power under Section 200 E to 204 Cr.P.C., can always be subject matter of challenge under the inherent jurisdiction of the High Court under Section 482 Cr.P.C. The position has now come to rest to the effect that the revisional jurisdiction under Section 397 Cr.P.C. is available to the aggrieved party in challenging the order of the Magistrate, directing F issuance of summons. [Paras 22, 24] [565-C-F; 566-D]

Rajendra Kumar Sitaram Pande and others vs. Uttam and another AIR 1999 SC 1028: 1999 (1) SCR 580; *K.K. Patel and another vs. State of Gujarat and another* AIR 2000 G SC 3346: 2000 (1) Suppl. SCR 312; *Om Kumar Dhankar vs. State of Haryana and another* (2012) 11 SCC 252 and *Subramanium Sethuraman vs. State of Maharashtra and another* (2004) 13 SCC 324 – relied on.

H *Adalat Prasad vs. Rooplal Jindal and others* (2004) 7

SCC 338; *Bholu Ram vs. State of Punjab and another* **(2008) 9 SCC 140: 2008 (12) SCR 959**; *N.K. Sharma vs. Abhimanyu* **(2005) 13 SCC 213: 2005 (4) Suppl. SCR 207**; *Amar Nath and others vs. State of Haryana* **(1977) 4 SCC 137: 1978 (1) SCR 222**; *Madhu Limaye vs. State of Maharashtra* **(1977) 4 SCC 551: 1978 (1) SCR 749**; *V.C. Shukla vs. State through CBI* **1980 2 SCR 380**; *Dharimal Tobacco Products Ltd. and others vs. State of Maharashtra and another* **AIR 2009 SC 1032: 2008 (17) SCR 844**; *K.M. Mathew vs. State of Kerala and another* **(1992) 1 SCC 217: 1991 (2) Suppl. SCR 364**; *Nilamani Routray vs. Bennett Coleman and Co. Ltd.* **(1998) 8 SCC 594 and** *Rakesh Kumar Mishra vs. State of Bihar and others* **(2006) 1 SCC 557: 2006 (1) SCR 124 – referred to.**

2.1. With reference to the complaint allegedly lodged by 'M' against the appellant, the alleged offence, if to be taken cognizance of, could have fallen under any of the offences falling under Chapter XX of IPC. Under Section 198(1) of the CrPC it is specifically stipulated that no Court shall take cognizance of an offence punishable under Chapter XX of IPC except upon a complaint made by some person aggrieved by the offence. Sub-section (2) further states that for the purpose of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code and the proviso to the said section makes it clear that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf. Under Chapter XX of the IPC, Sections 493 to 498 have been set out. For all or any of the offences falling under Sections 493 to 498 IPC in Chapter XX, an aggrieved person can be either the husband or the wife and none else other than those who

A would fall under the proviso to sub-section (2) of Section 198 Cr.P.C. [Paras 33, 34 and 35] [570-H; 571-A-F]

2.2. In the circumstances of the case, when the offence complained of by 'M' is taken into account, she cannot be
B held to be an aggrieved person falling under Section 198(1) Cr.P.C. or for that matter governed by the proviso to Section 198(2). The respondent entered the house of the appellant on 26.06.1997 pursuant to the complaint made by 'M'. If the said complaint of 'M' cannot validly form the
C basis for the respondent to exercise his power and authority as an Executive Magistrate/SDM, one is at a loss to understand as to through what other source, the respondent acquired the power or was empowered to barge into the house of the appellant under the garb of an Executive Magistrate. Therefore, it cannot be held that the
D respondent validly exercised his authority as an Executive Magistrate when he acted based on the complaint of 'M'. [Para 35] [571-G-H; 572-A-B]

2.3. If there is no scope to bring the action of the
E respondent under Section 198 Cr.P.C, the only other provision under which the respondent could have acted while ordering a search could have been only under Section 107 Cr.P.C. Section 107 relates to breach of peace or disturbing the public tranquility or to do any
F wrongful act that may probably occasion a breach of peace or disturb the public tranquility. When the simple allegation of 'M' against the appellant was that the appellant was having some illegal relationship with 'R' in the premises in which the appellant was residing, there
G is absolutely no scope for the respondent to invoke Section 107 Cr.P.C and contend that he acted by virtue of the authority vested in him under the said provision. [Para 36] [572-C-F]

3.1. The only other aspect to be examined is the
H conduct of medical examination on the appellant and 'R'.

The alleged medical examination was stated to have been conducted prior to the arrest of appellant and 'R'. Under Sections 53 and 54 CrPC, the scope of holding a medical examination on an accused is provided for. Reading Sections 53 and 54 together, prior to the arrest of a person and in the absence of any alleged offence which would require such medical examination there was no scope for anyone, much less for a person in the capacity of an Executive Magistrate to order for a forcible medical examination. [Paras 37, 38] [572-G-H; 573-E-F]

3.2. The allegations complained of against the respondent at the instance of the appellant in the present proceedings if found to be true, the resultant position would be, that the respondent cannot be said to have legally acted in his official capacity as Executive Magistrate while ordering for the search and inquiry by the Tehsildar, the DSP and the other police officers along with the two video cameramen. Again, the only basis for the respondent to act was the so called complaint of 'M' alleging that the appellant was having illicit relationship with 'R'. Assuming such an allegation of 'M' was true on its face value, one wonders, how a person in the rank of an SDM took a decision to barge into the house of a lady, that too at the odd hours of 10 pm accompanied by a posse of police officers under the guise of ascertaining the truthfulness or otherwise of such a complaint and for that purpose engage the services of two cameramen also with video cameras. Such a behaviour of the respondent as narrated in the complaint of the appellant, if ultimately found to be true, can only be held to be a high handed one bordering on indecency of the highest order, wholly abusing his status as SDM and can never be held to have acted within the statutory framework of law. [Para 39] [573-G-H; 574-A-C]

4. The respondent though might have been holding

A the post of an Executive Magistrate, none of the acts alleged against him can by any stretch of imagination be held to have been carried out in his capacity as an Executive Magistrate. When the said conclusion based on the allegations set out in the complaint and noted by
B the Courts below are inescapable, it will have to be held that invocation of Section 197 of Cr.P.C. was wholly uncalled for and consequently the impugned orders of the Sessions Judge as well as the High Court cannot be sustained. Resultantly, the summons issued by the trial
C Court dated 30.07.2001 and the order dated 17.04.2007 by which the Magistrate declined to recall the issuance of summons on 30.07.2001 should stand restored. [Para 41] [574-G-H; 575-A-B]

D Per Thakur, J. [Concurring]

HELD:1. Excesses by those in authority affect not only the immediate victims who suffer them, but should such excesses go unnoticed and unpunished, they have a more pernicious effect in that they tend to erode the
E Rule of Law, violate fundamental rights and shake the faith and the confidence of the people in the efficacy and the credibility of the institutions that are meant to protect the citizens against them and eventually lead to catastrophic results like anarchy and the return of dark
F days of barbarism. [Para 6] [580-D]

D.K. Basu v. State of West Bengal (1997) 1 SCC 416: 1996 (10) Suppl. SCR 284; *Smt. Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble and Anr.* (2003) 7 SCC 749: 2003 (3) Suppl. SCR 426; *Sube Singh v. State of Haryana*
G *and Ors.* (2006) 3 SCC 178: 2006 (2) SCR 67; *State of M.P. v. Shyamsunder Trivedi and Ors.* (1995) 4 SCC 262: 1995 (1) Suppl. SCR 44; *State of Punjab v. Baldev Singh, etc.* AIR 1999 SC 2378: 1999 (3) SCR 977 and *State of Maharashtra and Ors. etc. v. Saeed Sohail Sheikh etc.* AIR 2013 SC 168:
H 2012 SCR 916 – referred to.

2.1. The protection of Section 197, Cr.P.C. will be available only if the following ingredients are satisfied: (a) The person concerned is or was a judge or magistrate or public servant; (b) Such person is not removable from his office save by the sanction of the Government; (c) Such person is accused of commission of an offence and (d)Such offence is committed while the person concerned was acting or purporting to act in the discharge of his official duties. [Para 9] [582-B-D]

2.2. In the instant case, the first three of the four requirements set out above are satisfied inasmuch as the respondent public servant was not removable from the office held by him save by or with the sanction of the Government and he is accused of the commission of offences punishable under the Indian Penal Code. What constituted the essence of the forensic debate at the bar was whether the offences allegedly committed by the respondents were committed while he was 'acting or purporting to act in the discharge of his official duty'. The words "acting or purporting to act in the discharge of his official duty" appearing in Section 197 are critical not only in the case at hand but in every other case where the accused invokes the protection of that provision. The expression "*official duty*" appearing in Section 197 has not been defined. The dictionary meaning of the expression would, therefore, be useful for understanding the expression both literally and contextually. [Para 10] [582-E-H; 583-A-B]

2.3. The expression "official duty" would in the absence of any statutory definition denote a duty that arises by reason of an office or position of trust or authority held by a person. It follows that in every case where the question whether the accused was acting in discharge of his official duty or purporting to act in the discharge of such a duty arises for consideration, the

A Court will first examine whether the accused was holding an office and, if so, what was the nature of duties cast upon him as holder of any such office. It is only when there is a direct and reasonable nexus between the nature of the duties cast upon the public servant and the act
B constituting an offence that protection under Section 197 Cr.P.C may be available and not otherwise. Just because the accused is a public servant is not enough. A reasonable connection between his duties as a public servant and the acts complained of is what will determine
C whether he was acting in discharge of his official duties or purporting to do so, even if the acts were in excess of what was enjoined upon him as a public servant within the meaning of that expression under Section 197 of the Code. [Para 14] [583-F-H; 584-A-B]

D 2.4. The test of direct and reasonable connection between the official duty of the accused and the acts allegedly committed by them is the true test to be applied while deciding whether the protection of Section 197 of the Cr.P.C. is available to a public servant accused of the
E commission of an offence. The High Court has not adverted to this test nor has it held that there existed a direct and reasonable connection between the official duty being discharged by the accused public servant and the acts committed by him. The High Court has on the
F contrary misdirected itself when it said that the accused had only committed an act of omission towards his official duties which entitled him to the protection of Section 197 of the Code. [Para 17] [586-E-F]

G 2.5. It is difficult to appreciate what the High Court meant by saying that the acts of the accused were "at best acts of omission towards official duty". It was not the case of the respondent before the High Court nor is it his case before this Court that the complaint filed by 'M' disclosed any offence which could be taken cognizance of by him
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as an Executive Magistrate or investigated by the police. Assuming that the complainant-appellant and 'R' were living together even when they were not married to each other, the complaint regarding any such relationship could be filed only by the wife of 'R', or the husband of the complainant. The complaint filed by 'M' could not provide a valid basis for the SDM, the Tehsildar or the Deputy Superintendent of Police concerned to barge into the house of the complainant, humiliate or harass her or drag her to the police station without the registration of any case or subject her to an uncalled for medical examination. The test of direct and reasonable connection between the official duty of the respondent Sub Divisional Magistrate and the police officers concerned and the acts complained of thus fails in the present case especially because there is not even a semblance of a lawful justification forthcoming from the respondent for what he did. Entering the house of a woman, after sunset with a posse of police force, carrying video cameras conducting an unwarranted search of the house, humiliating and invading the privacy of the complainant, insulting and humiliating 'R' by asking him to undress and dragging both of them to the police station for medical examination against their wishes, especially when male doctors were asked to examine the complainant which added insult to injury, all remain unsupported by any lawful justification and have no connection with the duties that were cast upon the respondent as a public servant, even if a complaint alleging an adulterous relationship between the appellant and 'R' had been received by the SDM. The alleged acts of the respondent cannot, therefore, be said to be in discharge of his official duties or in the purported discharge of such duties. Public functionaries cannot under the cloak of purported discharge of official duties resort to harassment and humiliation of the citizens on the pretext of a complaint having been received by them, especially when the same does not disclose the

A B C D E F G H

A **commission of any offence triable by the Executive Magistrate or cognizable by the police; nor was there any other proceeding in connection with which such conduct could be justified in law. The plea of the respondent that the prosecution was barred under Section 197 Cr.P.C. has,**
B **therefore, to be rejected. [Para 18] [587-F-H; 588-A-G]**

P. Arulswami v. State of Madras **AIR 1967 SC 776: 1967 SCR 201;** *B. Saha and Ors. v. M.S. Kochar* **(1979) 4 SCC 177: 1980 (1) SCR 111 and** *General Officer Commanding etc. v. CBI and Anr. etc.* **(2012) 6 SCC 228: 2012 (5) SCR**
C **599 – relied on.**

Black's Law Dictionary and Law Lexicon **– referred to.**

First Hamlyn Lecture of 1949 by Lord Denning under
D **the title "Freedom under the Law" – referred to.**

Case Law Reference:

In the judgment of Fakkir Mohamed Ibrahim Kalifulla, J.

E	(2004) 7 SCC 338	referred to	Para 11
	2008 (12) SCR 959	referred to	Para 11
	2005 (4) Suppl. SCR 207	referred to	Para 11
	(2004) 13 SCC 324	relied on	Para 11
F	2000 (1) Suppl. SCR 312	relied on	Para 12
	1978 (1) SCR 222	referred to	Para 12
	1978 (1) SCR 749	referred to	Para 12
G	1980 2 SCR 380	referred to	Para 12
	1999 (1) SCR 580	relied on	Para 12
	2008 (17) SCR 844	referred to	Para 12
H	1991 (2) Suppl. SCR 364	referred to	Para 14

(1998) 8 SCC 594	**referred to**	**Para 17**
(2012) 11 SCC 252	**relied on**	**Para 23**
2006 (1) SCR 124	**referred to**	**Para 23**
In the judgment of T.S. Thakur, J.		
1996 (10) Suppl. SCR 284	**referred to**	**Para 3**
2003 (3) Suppl. SCR 426	**referred to**	**Para 4**
2006 (2) SCR 67	**referred to**	**Para 4**
1995 (1) Suppl. SCR 44	**referred to**	**Para 4**
1999 (3) SCR 977	**referred to**	**Para 5**
2012 SCR 916	**referred to**	**Para 5**
1967 SCR 201	**relied on**	**Para 14**
1980 (1) SCR 111	**relied on**	**Para 15**
2012 (5) SCR 599	**relied on**	**Para 16**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1822 of 2013.

From the Judgment & Order dated 20.07.2011 of the High Court of Punjab & Haryana at Chandigarh in Crl. Misc. No. M-9585/08 (O&M).

Rishi Malhotra for the Appellant.

Dr. Balram Gupta, Manjeet Singh, Sudhir Bisla, Sanjit Singh, Nikhil Jain for the Respondent.

The Judgments of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. Leave granted.

2. This appeal at the instance of the complainant is

A directed against the judgment of the High Court of Punjab and Haryana at Chandigarh, in Criminal Miscellaneous Petition No.9585-M of 2008. The High Court, by the order impugned in this appeal, confirmed the order of the learned Additional Sessions Judge, Panchkula dated 10.03.2008, in and by which, B the learned Additional Sessions Judge reversed the orders of the learned Chief Judicial Magistrate, Panchkula dated 30.07.2001 and 17.04.2007.

3. The brief facts, which are required to be stated are that the appellant herein filed a complaint against the respondent, C alleging that the respondent threatened the appellant and one Shri. R.C. Chopra that if they did not withdraw the complaint filed by them earlier as against one Smt.Maya Rani, under Section 500 I.P.C., both of them will not remain in service. By an order dated 30.07.2001, the learned Chief Judicial D Magistrate, Panchkula summoned the accused 1 to 10 and 12 to face the trial for the offences under Sections 323, 354, 389, 452, 458, 500 and 506, read with Sections 34 and 120-B of I.P.C.

E 4. The first accused who is the sole respondent herein, filed an application to recall the summoning order dated 30.07.2001. The said application was dismissed by the learned Chief Judicial Magistrate by an order dated 04.07.2007, on the ground that the summoning order, which was passed way back F on 30.07.2001 and that recalling the order, would amount to reviewing of the order, which was not permissible in law.

5. The respondent preferred a revision before the learned Additional Sessions Judge, who by an order dated 10.03.2008, while accepting the revision, set aside both the orders dated G 30.07.2001 and 17.04.2007, holding that in view of the bar enjoined under Section 197 Cr.P.C., the respondent herein who is a Sub-Divisional Magistrate, could not be summoned to face the trial. It is the said order of the learned Additional Sessions Judge, which was the subject matter of challenge before the H

High Court and the High Court by the impugned order, declined to interfere with the order of the learned Additional Sessions Judge, Panchkula.

6. We have heard Mr. Rishi Malhotra, learned counsel for the appellant and Dr. Balram Gupta, learned Senior counsel for the respondent.

7. The learned counsel appearing for the appellant contended that the learned Chief Judicial Magistrate had no power under the provisions of the Criminal Procedure Code to recall or review its own order summoning the accused, including the respondent herein. There was no jurisdiction in the learned Additional Sessions Judge, Panchkula to entertain the revision under Section 397 of Cr.P.C. According to the learned counsel, neither the order issuing summons to the respondent dated 30.07.2001, nor the order dated 17.04.2007, or any other order, can be challenged by way of revision under Section 397 of Cr.P.C. It was contended that both the orders viz., 30.07.2001, as well as 17.04.2007, were only interim orders and therefore, the bar under Section 397(2) of Cr.P.C. would operate for the learned Additional Sessions Judge to entertain the revision petition. The contention of the learned counsel was that if at all the respondent was aggrieved as against the orders dated 30.07.2001 and 17.04.2007, he could have only approached the High Court under Section 482 of the Code of Criminal Procedure and not by way of a revision under Section 397 of Cr.P.C.

8. It was also contended that since the sole issue raised before the learned Chief Judicial Magistrate, while seeking to recall the order dated 30.07.2001, was that the respondent being a Sub Divisional Magistrate and the action complained of by the appellant was in the course of discharge of his functions as Sub Divisional Magistrate, the appellant ought to have sought for the necessary sanction under Section 197 of the Code of Criminal Procedure, before preferring a complaint

A before the learned Chief Judicial Magistrate. It was also contended that it would be a question, which could have been gone into by the learned Trial Judge at the time of trial in as much as, according to the appellant the manner in which the respondent and the other accused behaved in the house of the B appellant would be a relevant factor to determine the said question.

9. According to the appellant, on 26.06.1997, Shri R.C. Chopra came to her house at about 09.30 P.M. to discuss about the evidence to be adduced in the Court relating to the C complaint filed by the appellant, as against one Smt. Maya Rani in the Court of the learned Chief Judicial Magistrate, Panchkula, that when they were discussing about the same, at the instance of the respondent herein, the Tehsildar, the second accused, DSP the third accused, ASI the fourth accused, Head D Constable the fifth accused, along with accused No.7 and 8 who were having video cameras, forcibly entered the appellant's house in civil dress, woke up the children of the appellant and questioned them with a view to insult them in the presence of the children as to what R.C. Chopra was doing in her residence. E It was further alleged that R.C. Chopra was directed to pull down his clothes and while such activities were going on, the appellant was pleading for mercy and the second accused directed for a thorough search of the suitcase, trunks, almirah and the personal belongings of the appellant and thus, created F a nasty scene in her house. It was alleged that Shri. R.C. Chopra and the appellant were made to board a jeep brought by the third accused and were taken to the Civil Hospital, Kalka, where the appellant was forcibly examined by a male doctor and was also not allowed to contact her friends through G telephone. According to the appellant, even though R.C. Chopra had an order of anticipatory bail granted by the learned Additional Sessions Judge, Ambala, the first accused declined to abide by the said order and therefore, the appellant had to prefer a complaint before the learned Chief Judicial Magistrate, H Panchkula. It was contended that the above conduct of the

respondent and other accused cannot be construed as one performed in the course of discharge of their official duties and therefore, the learned Chief Judicial Magistrate, Panchkula rightly issued summons in the complaint preferred by the appellant and also declined to recall the same holding that once summons were issued, there was no power vested in the Chief Judicial Magistrate to review his own order. Therefore, it was contended on behalf of the appellant that the said order of the learned Chief Judicial Magistrate, Panchkula being an interim order, revision under Section 397 Cr.P.C. before the learned Additional Sessions Judge was not maintainable and consequently, the order of the High Court in declining to interfere with the same is liable to be set aside and the order of the learned Additional Sessions Judge dated 10.03.2008, is also liable to be set aside.

10. As against the above submissions, the learned senior counsel appearing for the respondent contended that this Court has held in innumerable decisions that an order-issuing summons is not an interim order, but an intermediate order and therefore, the jurisdiction of the revisional Court under Section 397 of Cr.P.C. was not ousted. It was also contended that in any event, when the inherent jurisdiction of the High Court was invoked by the appellant herself, the whole issue as regards the validity of the issuance of summons by the learned Chief Judicial Magistrate, which was the subject matter of challenge was open, that the High Court could validly examine the correctness of the issuance of summons by the learned Chief Judicial Magistrate and therefore no fault can be found with the order of the High Court impugned in this appeal.

11. The learned counsel for the appellant by relying upon the decisions in *Adalat Prasad vs. Rooplal Jindal and others - (2004) 7 SCC 338*, *Bholu Ram vs. State of Punjab and another - (2008) 9 SCC 140*, *N.K. Sharma vs. Abhimanyu - (2005) 13 SCC 213* and *Subramanium Sethuraman vs. State of Maharashtra and another - (2004) 13 SCC 324*, contended

A that only the jurisdiction of the High Court under Section 482 Cr.P.C. alone could have been invoked, as against the order of the learned Chief Judicial Magistrate deciding to issue summons against the respondent and not by way of revision under Section 397 Cr.P.C.

B

12. The learned counsel for the respondent relied upon the decisions in *K.K. Patel and another vs. State of Gujarat and another* reported in *AIR 2000 SC 3346*, where the earlier decisions of this Court in *Amar Nath and others vs. State of Haryana – (1977) 4 SCC 137, Madhu Limaye vs. State of* C *Maharashtra – (1977) 4 SCC 551, V.C. Shukla vs. State through CBI - 1980 2 SCR 380* and *Rajendra Kumar Sitaram Pande and others vs. Uttam and another - AIR 1999 SC 1028,* were followed, which was reiterated in **Adalat Prasad** (supra). Reliance was also placed upon the recent decision of this Court D in *Dharimal Tobacco Products Ltd. and others vs. State of Maharashtra and another* reported in *AIR 2009 SC 1032.*

13. Having heard the learned counsel for the appellant, as well as the respondent and having perused the orders of the E learned Chief Judicial Magistrate, Panchkula, the learned Additional Sessions Judge, Panchkula, as well as the judgment of the High Court impugned in this appeal, we feel that the minute distinction as between the two sets of decisions dealing with the question as to whether the order issuing summons can F be construed as an interim order or an intermediate order on the one hand and what is the scope of challenging such an order by way of revision under Section 397 Cr.P.C needs to be highlighted. We feel that having regard to the above mentioned decisions, which dealt with the said question, it has G become imperative for this Court to give an authoritative pronouncement by reconciling the above decisions, which have dealt with the jurisdictional issue raised under section 397 Cr.P.C. and the nature of the order and also as to how to construe an order passed by the learned Judicial Magistrate, while deciding to issue summons to a party under Section 202 H Cr.P.C.

14. In the decision in *K.M. Mathew vs. State of Kerala and another* reported in (1992) 1 SCC 217, it was held that the order issuing the process is an interim order and not a judgment and it can be varied or recalled. It was held in paragraph 8 that the fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused. Here and now, we want to make it abundantly clear that in the said decision, this Court did not examine the question about the reviseability of an order passed under Section 204 Cr.P.C., either by the Sessions Judge or by the High Court in exercise of its revisional jurisdiction under Section 397 Cr.P.C. On the other hand in the decision in ***Rajendra Kumar Sitaram Pande*** *(supra)* this Court after referring to the earlier decisions in ***Amar Nath*** *(supra)*, ***Madhu Limaye*** *(supra)* and ***V.C. Shukla*** *(supra)* held as under in paragraph 6:

> "6.....this Court has held that the term 'interlocutory order' used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted **if the order was not purely interlocutory but intermediate or quasi final.** This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. **On the other hand, it must be held to be intermediate or quasi final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same.** The High Court, therefore, was not justified in coming to the conclusion that the Sessions Judge had no jurisdiction to interfere with the order in view of the bar under sub-section (2) of Section 397 of the Code." (Emphasis added)

15. This decision makes it clear that an order directing

A issuance of process is an intermediate or quasi final order and therefore, the revisional jurisdiction under Section 397 Cr.P.C. can be exercised against the said order. This view was subsequently reiterated by this Court in ***K.K. Patel*** *(supra)*. After making reference to the cases of ***Madhu Limaye*** *(supra)*, B ***V.C. Shukla*** *(supra)*, as well as ***Rajendra Kumar Sitaram Pande*** *(supra)*, this Court laid down the test for finding out as to what order can be construed as an interim order in order to find out the exercisability of the revisional jurisdiction under Section 397 (2) of Cr.P.C. The said part of the order contained C in Para 12 can be usefully referred to which reads as under:

> "12..... The feasible test is whether by upholding the objections raised by a party, would it result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as D envisaged in S.397(2) of the Code. **In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated.** Hence, as per the said standard, the order was revisable." (Emphasis added)

E

16. A perusal of the above referred two decisions discloses that the reviseability of the order passed under Section 204 Cr.P.C. either by the Sessions Judge or the High Court, was never challenged and the decision that such an F order is revisable under Section 397 Cr.P.C. therefore, continue to remain even as on date. It is also necessary to point out that the ratio of the decision in ***K.M. Mathew*** *(supra)* that the power of the Criminal Court to review its own order passed under Section 204 Cr.P.C. was inherent in the absence of any specific provision in the Cr.P.C. was referred for consideration G by a larger Bench of three-Judge in the decision in **Adalat Prasad** *(supra)*.

17. In fact, the said issue was referred to a larger Bench even in an earlier case of Nilamani Routray vs. Bennett H Coleman and Co. Ltd. *reported in (1998) 8 SCC 594*. However,

the said case got settled out of Court and hence, the issue involved in *K.M. Mathew (supra)* was not decided by the Larger Bench. The said issue was therefore, considered only in the case of *Adalat Prasad (supra)*. This Court ultimately held that in the absence of any review power or inherent power with the subordinate criminal Court, there was no jurisdiction or power vested in the Magistrate to review or recall its order deciding to issue summons. It was however held that in the absence of any review power or inherent power in the subordinate criminal Court, the remedy is by invoking Section 482 of Cr.P.C. Ultimately, in paragraph 17 of the *Adalat Prasad (supra)*, this Court held that it was not necessary for this Court to go into the question as to whether an order issuing process would amount to interim order or not. Having regard to the scope of consideration made by this Court in *Adalat Prasad (supra)*, the only question posed for consideration was whether the Court, which decides to issue summons, did possess the power to review under the provisions of the Code of Criminal Procedure or by way of exercise of its inherent power, where the question was ultimately answered to the effect that such power was neither inherent in the Magistrate to decide to issue process, nor was there any statutory provision available either to recall or review such a decision to issue process. Therefore, it has become incumbent upon this Court to make the position clear, as to how to construe an order passed by a Magistrate in exercise of its power under Sections 200 and 202 Cr.P.C. when it decides to issue the process as against the accused concerned and whether such an order could be the subject matter of challenge by way of revision under Section 397 Cr.P.C.

18. At the risk of repetition, we make it clear that when the Larger Bench of this Court in ***Adalat Prasad*** *(supra)* considered the earlier law declared by this Court in ***K.M. Mathew*** *(supra)*, that there was neither inherent power nor statutory power either to recall or review the order passed by the Magistrate to issue summons, the question which we have

A decided to examine was never considered and therefore, it would be appropriate for this Court to decide as regards the nature of such an order and the scope of power and jurisdiction of the revisional Court exercising jurisdiction under Section 397 Cr.P.C.

B

19. After the decision in *Adalat Prasad (supra)* wherein, the ratio in *K.M. Mathew (supra)* was reversed, the issue was once again considered by the Larger Bench in *Subramaniam Sethuraman (supra)*. After making reference to *Adalat Prasad (supra)*, this Court has held in ***Subramaniam Sethuraman*** C *(supra)* as under in paragraph 19:

> "19. We see that this Court while dismissing earlier S.L.P. as withdrawn had left the question of legality of the notice open to be decided at the trial. Therefore, legitimately the D appellant should raise this issue to be decided at the trial. Be that as it may, we cannot prevent an accused person from taking recourse to a remedy which is available in law. In Adalat Prasad case we have held that for an aggrieved person the only course available to challenge the issuance E of process under Section 204 of the Code is by way of a petition under Section 482 of the Code. **Hence, while we do not grant any permission to the appellant to file a petition under Section 482, we cannot also deny him the statutory right available to him in law**....."

F

(Emphasis added)

20. It has been virtually held that apart from the remedy available under Section 482, the aggrieved party can also workout the other remedies available in law.

G

21. When we examine the said ratio laid down in ***Subramaniam Sethuraman*** *(supra)*, considering the earlier view of this Court rendered in umpteen number of judgments, including the one mentioned in ***K.K. Patel*** *(supra)*, wherein a H test was laid down to ascertain, which order can be construed

as an interlocutory order or intermediatory order, it was held thereunder to the effect that the order deciding to issue summons would be only intermediatory or quasi final order, which would be subject to the revisional jurisdiction under Section 397 Cr.P.C.

22. Having regard to the said categorical position stated by this Court in innumerable decisions resting with the decision in *Rajendra Kumar Sitaram Pande (supra),* as well as the decision in *K.K. Patel (supra)*, it will be in order to state and declare the legal position as under:

> (i) The order issued by the Magistrate deciding to summon an accused in exercise of his power under Sections 200 to 204 Cr.P.C. would be an order of intermediatory or quasi-final in nature and not interlocutory in nature.
>
> (ii) Since the said position viz., such an order is intermediatory order or quasi-final order, the revisionary jurisdiction provided under Section 397, either with the District Court or with the High Court can be worked out by the aggrieved party.
>
> (iii) Such an order of a Magistrate deciding to issue process or summons to an accused in exercise of his power under Section 200 to 204 Cr.P.C., can always be subject matter of challenge under the inherent jurisdiction of the High Court under Section 482 Cr.P.C.

23. When we declare the above legal position without any ambiguity, we also wish to draw support to our above conclusion by referring to some of the subsequent decisions. In a recent decision of this Court in *Om Kumar Dhankar vs. State of Haryana and another reported in (2012) 11 SCC 252*, the decisions in *Madhu Limaye (supra), V.C. Shukla (supra), K.M. Mathew (supra), Rakesh Kumar Mishra vs. State of Bihar*

A *and others reported in (2006) 1 SCC 557* ending with *Rajendra Kumar Sitaram Pande (supra)*, was considered and by making specific reference to paragraph 6 of the judgment in *Rajendra Kumar Sitaram Pande*, this Court has held as under in paragraph 10:

B

> "10. In view of the above legal position, we hold, as it must be, that revisional jurisdiction under Section 397 Cr.P.C., was available to the Respondent No.2 in challenging the order of the Magistrate directing issuance of summons. The first question is answered against the appellant
C accordingly."

24. Therefore, the position has now come to rest to the effect that the revisional jurisdiction under Section 397 Cr.P.C. is available to the aggrieved party in challenging the order of
D the Magistrate, directing issuance of summons.

25. With this when we proceed to examine the correctness of the orders impugned by the appellant, we find that the High Court after examining the facts in issue held that the initiative taken by the respondent herein by directing the third
E accused along with the other official accused was in exercise of his statutory power under the provisions of the Code of Criminal Procedure and, therefore, the requirement of the compliance of Section 197 of Cr.P.C. was paramount. The High Court, therefore, held that the conclusions of the learned
F Additional Sessions Judge that the issuance of the summons by the Magistrate lacked in jurisdiction was correct and upheld the said order.

26. In order to appreciate the above conclusions reached
G by the learned Additional Sessions Judge as well as by the High Court and to examine whether such a conclusion can be sustained it will be necessary to reiterate brief facts which culminated in the issuance of the summons to the respondent. The appellant is a Pharmacist and is working in ESI dispensary
H situated in the premises of HMT Pinjore for the last about 20

years. She is stated to have been living along with her two daughters and a son in an official accommodation allotted to her by the dispensary authorities in Quarter's No.8-4, ESI Dispensary, HMT, Pinjore situated in the first floor. In the same premises one Maya Rani was living in the ground floor. The appellant is stated to have filed a complaint against the said Smt. Maya Rani under Section 500 IPC alleging that she authored a letter using objectionable and filthy language against the appellant. The complaint of the appellant was being enquired into by the learned Chief Judicial Magistrate, Panchkula where Smt. Maya Rani and others were summoned to face the trial. According to the appellant a day prior to the recording of evidence before the learned Chief Judicial Magistrate on the complaint filed by the appellant against Smt. Maya Rani (i.e.) on 26.6.1997 one Shri R.C. Chopra visited the house of the appellant, and that on that date at 10 pm a team consisting of ASI Onkar Singh, Head Constable Om Prakash and two other persons with video cameras barged into the house of the appellant in civil dress. The abovesaid persons were stated to have been followed by DSP Mrs. Rajshri Singh and that a little while later the Tehsildar along with the respondent, who was the SDM Kalka, also entered the appellant's house who directed the search of the appellant's house. It is the further case of the appellant that the respondent herein, who was the Sub-Divisional Magistrate and who has been arrayed as accused no.1, threatened the appellant and Shri R.C. Chopra to withdraw the case filed against Smt. Maya Rani pending before the Chief Judicial Magistrate, Panchkula. Based on the above allegations, the appellant preferred the complaint dated 30.07.2001 before the Chief Judicial Magistrate, in which the respondent and the other accused were summoned to face the trial for offences under Sections 323, 354, 452, 458, 389, 500, 506 read with Sections 34 and 120-B IPC. The respondent filed an application for recalling the summoning order dated 30.07.2001 which was dismissed by the learned Chief Judicial Magistrate on 04.07.2001 holding that the summoning order

had been passed as early as on 30.07.2001 and recalling the same would amount to review of its own order which was not permissible in law.

27. The appellant also alleged that there was no occasion for the respondent and other persons who accompanied him to forcibly enter her house on the fateful night and question the relationship of the appellant with R.C. Chopra. It was further alleged that appellant and R.C. Chopra were harassed by the police officials along with accused 7 and 8 who had come with video cameras which amounted to further harassment. According to the appellant, Mr. R.C. Chopra was forced to remove his clothes in front of other officials and that both of them were taken to the civil hospital where the appellant was examined by a male doctor, namely, Dr. S.K. Gupta and Dr. Dewan which was again not in consonance with law. In the above stated background, it was contended that none of the acts complained of against the respondent would amount to exercise of any powers in his official capacity as SDM and, therefore, he could not have taken umbrage under Section 197 Cr.P.C. It was, therefore, contended that the order of the learned Additional Sessions Judge and the confirmation of the same by the High Court in having held that for want of sanction under Section 197 Cr.P.C the whole complaint of the appellant was not maintainable was thoroughly illegal and the same is liable to be set aside.

28. When we examine the above stand of the appellant, it is necessary to note the relevant provisions under the Criminal Procedure Code as well as Indian Penal Code to find out whether it can be held that the act complained of against the respondent and the various allegations relating to him along with the other respondents, some of whom were police officials, can be construed as one in exercise of his official duties or responsibilities and thereby invocation of Section 197 Cr.P.C would be attracted.

29. Sub-section 4(b) of Section 3 of Cr.P.C specifically stipulated as to the functions exercisable by an Executive Magistrate which reads as under: A

> "**3(4)(b)** Which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate." B

The other relevant sections are Sections 20 to 23 of Cr.P.C which refers to Executive Magistrates, Special Executive Magistrates, the local jurisdiction of Executive Magistrates and the subordination of Executive Magistrates. C

30. As far as issuance of search warrants are concerned, it is governed by Sections 91 to 94 of the Cr.P.C. Section 93 of the Code empowers a Court for issuance of warrant of search. However, such issuance of search warrant can be made only in respect of the requirement and fulfillment of Section 91 or sub-section 1 of Section 92. The only other provision relating to warrant of search or the power of search by a Magistrate is provided under Section 103 which states "any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search warrant". Apart from Section 103, under Section 107 an Executive Magistrate has been empowered to require a person to show cause why he should not be ordered to execute a bond with or without sureties for keeping peace for such period, not exceeding one year, as the Magistrate thinks fit. The said provision can be invoked by an Executive Magistrate only when he receives information that any person is likely to commit a breach of peace or disturb public tranquility or to do any wrongful act that may probably occasion a breach of peace or disturb public tranquility. In such situation if the Executive Magistrate is of the opinion that there is sufficient ground for proceeding then he should issue a show cause notice and thereafter pass necessary orders, in order to ensure that no D E F G H

A such apprehended breach of peace or disturbance within his local jurisdiction is allowed to take place.

31. Keeping the above statutory provisions in mind when we examine the allegations levelled against the respondent by the appellant it transpires that according to the appellant based B on a complaint preferred by Smt. Maya Rani alleging that the appellant and one R.C. Chopra were living in an illicit relationship, the respondent directed the Tehsildar to enquire into the matter and also directed the DSP to conduct special investigation. The respondent is also alleged to have C accompanied the investigation team along with two other persons, namely, accused 7 and 8 with video cameras and carried out the search in the house of the appellant. It is also alleged that the respondent threatened the appellant and R.C. Chopra to withdraw the case filed against Smt. Maya Rani. The D further allegation was that R.C. Chopra was made to strip off his clothes before others and thereby he was humiliated and that both the appellant and the said R.C. Chopra were forced to undergo a medical examination in the civil hospital against their will.

E

32. In the first place, we wish to ascertain whether there was any semblance of an official act in whatever act in which the respondent was alleged to have been involved as complained of by the appellant. In other words, it is necessary F to examine and find out whether the respondent alleged to have exercised his official authority and power entrusted to him under the provisions of the Code of Criminal Procedure while claiming to have acted as an Executive Magistrate for ordering searching operation of the premises of the appellant and having issued certain directions to physically examine the G appellant and Shri R.C. Chopra.

33. The various provisions which we have referred to above when examined with reference to the complaint alleged to have been lodged by Maya Rani against the appellant, we H find that the said alleged offence if to be taken cognizance of

could have fallen under any of the offences falling under Chapter XX of Indian Penal Code. Under Section 198(1) of the Cr.P.C. it is specifically stipulated that no Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence. Sub-section (2) further states that for the purpose of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code and the proviso to the said section makes it clear that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

34. Under Chapter XX of the Indian Penal Code, Sections 493 to 498 have been set out. Section 493 relates to cohabitation caused by a man deceitfully inducing a belief of lawful marriage. Section 494 relates to a person marrying again during the lifetime of husband or wife. Section 495 relates to the same offence with concealment of former marriage from a person with whom subsequent marriage is contracted. Section 496 refers to marriage ceremony fraudulently gone through without lawful marriage. Section 497 is the offence relating to adultery and Section 498 relates to enticing or taking away or detaining with criminal intent a married woman. Therefore, for all or any of the above offences falling under Sections 493 to 498 IPC in Chapter XX an aggrieved person can be either the husband or the wife and none else other than those who would fall under the proviso to sub-section (2) of Section 198 Cr.P.C.

35. In the circumstances when the offence complained of by Maya Rani is taken into account, we find that she cannot be held to be an aggrieved person falling under Section 198(1) Cr.P.C. or for that matter governed by the proviso to Section 198(2). There is no dispute about the fact of the respondent in having entered the house of the appellant on 26.06.1997

A pursuant to the complaint made by Smt. Maya Rani. Therefore, if the said complaint of Smt. Maya Rani cannot validly form the basis for the respondent to exercise his power and authority as an Executive Magistrate/SDM, we are at a loss to understand as to through what other source, the respondent B acquired the power or was empowered to barge into the house of the appellant under the garb of an Executive Magistrate. Therefore, it cannot be held that the respondent validly exercised his authority as an Executive Magistrate when he acted based on the complaint of Smt. Maya Rani.

C

36. If there is no scope to bring the action of the respondent under Section 198 Cr.P.C, the only other provision under which the appellant could have acted while ordering a search could have been only under Section 107 Cr.P.C. Indisputably the only allegation which could be culled out from D the facts pleaded was that the respondent acted based on the complaint of Smt. Maya Rani. Section 107 relates to breach of peace or disturbing the public tranquility or to do any wrongful act that may probably occasion a breach of peace or disturb the public tranquility. When the simple allegation of Smt. Maya E Rani against the appellant was that the appellant was having some illegal relationship with R.C. Chopra in the premises in which the appellant was residing, there is absolutely no scope for the respondent to invoke Section 107 Cr.P.C and contend that he acted by virtue of the authority vested in him under the F said provision.

37. Therefore, when the above provisions pursuant to which the respondent could have acted was not available to support the stand of the respondent, only other aspect to be examined G is the conduct of medical examination on the appellant and R.C. Chopra which according to the appellant was also not in consonance with the provisions of the Code. Under Sections 53 and 54 of Cr.P.C. the scope of holding a medical examination on an accused is provided for. Under Section 53(1) when a person is arrested on a charge of committing an H

offence of such a nature and alleged to have been committed under such circumstances that reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, such medical examination can be carried out. As highlighted above, none of the offences falling under Sections 493 to 498 of Indian Penal Code could be related or proceeded against the appellant or R.C. Chopra based on the alleged complaint of Smt. Maya Rani.

38. That apart, the alleged medical examination was stated to have been conducted prior to the arrest of the appellant and R.C. Chopra. The provisions of the Code is clear to the pointer that a person suspected or accused of having committed an offence cannot be forcibly subjected to a medical examination and in fact it can be stated that if police officers use force for that purpose the person aggrieved can lawfully exercise such right of private defence to resist such force. The scope of medical examination provided for under Section 54 of Cr.P.C. is that when a person is arrested, he shall be examined by a medical officer in the service of Central or State Governments and in case he is not available, by a registered medical practitioner soon after the arrest is made. Therefore, reading Sections 53 and 54 together, prior to the arrest of a person and in the absence of any alleged offence which would require such medical examination there was no scope for anyone, much less for a person in the capacity of an Executive Magistrate to order for a forcible medical examination.

39. The allegations complained of against the respondent at the instance of the appellant in the present proceedings if found to be true, the resultant position would be, that the respondent cannot be said to have legally acted in his official capacity as Executive Magistrate while ordering for the search and inquiry by the Tehsildar, the DSP and the other police officers along with the two video cameramen. It is again relevant to keep in mind that the only basis for the respondent to act was the so called complaint of Smt. Maya Rani alleging that

A the appellant was having illicit relationship with R.C. Chopra. Assuming such an allegation of Smt. Maya Rani was true on its face value, we wonder, how a person in the rank of an SDM took a decision to barge into the house of a lady, that too at the odd hours of 10 pm accompanied by a pose of police B officers under the guise of ascertaining the truthfulness or otherwise of such a complaint and for that purpose engage the services of two cameramen also with video cameras. In our considered opinion such a behaviour of the respondent as narrated in the complaint of the appellant, if ultimately found to C be true, can only be held to be a high handed one bordering on indecency of the highest order, wholly abusing his status as SDM and can never be held to have acted within the statutory framework of law.

40. At the risk of repetition it will have to be stated that when D such an allegation could not have formed the basis for prosecution of an offence falling under Section 198 Cr.P.C. read along with the provisions contained in Chapter XX of the Indian Penal Code, none of the actions alleged against the respondent by the appellant can be held to be one in which he E acted in his capacity as the Executive Magistrate. We are constrained to examine the above factors and steer clear of the factual position in order to state whether or not the conclusions reached by the Additional Sessions Judge and the High Court in the orders impugned to the effect that the invocation of F Section 197 Cr.P.C became imperative before proceeding against the respondent based on the complaint lodged by the appellant.

41. In our considered opinion, having regard to our above G conclusions, it will have to be held that the respondent though might have been holding the post of an Executive Magistrate, none of the acts alleged against him can by any stretch of imagination be held to have been carried out in his capacity as an Executive Magistrate. When the said conclusion of ours based on the allegations set out in the complaint and noted by H

the Courts below are inescapable, it will have to be held that invocation of Section 197 of Cr.P.C. was wholly uncalled for and consequently the impugned orders of the learned Additional Sessions Judge as well as the High Court cannot be sustained. Resultantly, the summons issued by the learned trial Court dated 30.07.2001 and the order dated 17.04.2007 by which the Magistrate declined to recall the issuance of summons on 30.07.2001 should stand restored. The appeal stands allowed with costs payable by the respondent in a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the appellant.

42. Since, the complaint is of the year 2001, we only direct the trial Court to proceed with the hearing of the case on day to day basis and conclude the same expeditiously preferably within three months from the date of production of copy of this order. We, however, make it clear that whatever stated by us in this judgment is only for the purpose of examining the correctness of the judgment of the learned Additional Sessions Judge and the High Court and we have not dealt with the merits of the case which shall be examined by the trial Court in accordance with law.

T.S. THAKUR, J. 1. I have had the advantage of going through the order proposed by my esteemed and noble Brother Kalifulla J. While I entirely agree with the conclusions arrived at by His Lordship, I propose to add a few lines of my own.

2. The draft order has painstakingly and with remarkable lucidity dealt with the question of maintainability of a revision petition before the High Court and concluded that such a revision petition was indeed maintainable. I can make no addition to what Kalifulla, J. has said on that count except to place on record my deep appreciation for an articulate and erudite statement of the legal position on the subject. What has impelled me to add to what is already said is the importance of the second issue that falls for our consideration touching the true and correct interpretation of Section 197 of the Code of Criminal Procedure, 1973. Incidents of abuse of authority by

A public servants, despite several pronouncements of this Court in which such abuse has been deprecated, and the effect which such abuse has on the confidence of the people in the Rule of Law to which we are committed and the credibility of the institutions that are meant to preserve and nurture that B confidence is what, in my opinion, calls for some elaboration. There is no gainsaying that excesses by those vested with power and abuse of official position by those who hold public offices cannot easily be eliminated, especially when respect for law is on the decline and enforcement machinery either C insensitive or inadequate. Even when complete eradication of such excesses and abuse may be a far cry, the mechanism for redressal against such abuse ought to be efficient. Absence or failure of any such mechanism can lead to disturbing and in extreme cases disastrous consequences as was aptly prophesied by Lord Denning in his first Hamlyn Lecture of 1949 under the title **"Freedom under the Law"** when he said:

> "No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to E do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer F suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for negligence... This G is not the task of parliament.... The courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country."

H

3. The above was said about civilized, highly developed countries with credible institutional backup. It is more so in the case of nascent democracies around the world. Experience in this country has shown that excesses are often committed by those in power. This Court has in several pronouncements expressed grave concern over the insensitivity of state authorities in protecting the basic rights of citizens and even gone to the extent of laying down principles that would bind such authorities to act humanely in situations that keep recurring. Of these decisions, cases dealing with custodial violence stand out in bold relief where this Court has deprecated incidents of torture and other inhuman, cruel or degrading treatment declaring such acts to be clear violations of citizens' fundamental right to life guaranteed under Article 21 of the Constitution of India. For instance in *D.K. Basu v. State of West Bengal (1997) 1 SCC 416*, this Court came down heavily on custodial torture and resultant death when it said:

> "...Custodial violence, including torture and death in the lock ups, strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law..... It is aggravated by the fact that it is committed by the persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society. These petitions raise important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Articles 21 and 22 of the Constitution of India. The issues are fundamental.
>
> xxx xxx xxx
>
> ...Any form of torture or cruel, inhuman or degrading

A treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and
B every man would have the tendency to become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen."

(emphasis supplied)

4. The decisions of this Court in *Smt. Shakila Abdul Gafar*
C *Khan v. Vasant Raghunath Dhoble and Anr. (2003) 7 SCC 749 and Sube Singh v. State of Haryana and Ors. (2006) 3 SCC 178,* among several other pronouncements, reiterate what was stated in *D.K. Basu's* case (supra) and declare in unequivocal terms that police excesses are not only
D impermissible in law but are in complete violation of citizens' rights and that such excesses need to be dealt with effectively so that the confidence of the people in the Rule of Law and the institutions that are meant to uphold the same is not shaken. A.S. Anand, J. as His Lordship then was, sounded a note of
E caution that unless stern measures are taken to check the malady of the 'fence eating the crop', the foundations of the criminal justice system would be shaken taking the country towards decay, anarchy and authoritarianism. Speaking for the Court in *State of M.P. v. Shyamsunder Trivedi and Ors. (1995) 4 SCC 262,* His Lordship observed:
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"Police excesses and the maltreatment of detainees/ under- trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in `Khaki' to consider themselves to be above the law and sometimes
G even to become law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crops, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading, towards total
H decay resulting in anarchy and authoritarianism

reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of judiciary itself, which, if it happens, will be a sad day, for any one to reckon with." A B

5. A reference may also be made to *State of Punjab v. Baldev Singh, etc. AIR 1999 SC 2378* where this Court held that legitimacy of judicial process may itself come under cloud if this Court were seen to be condoning acts of lawlessness conducted by the investigating agency during search operations which may in turn undermine respect for law and compromise the administration of justice. In *State of Maharashtra and Ors. etc. v. Saeed Sohail Sheikh etc. AIR 2013 SC 168* this Court had another occasion to emphasise the importance of the Rule of Law and to declare that police excesses, whether inside or outside the jail could never be countenanced in the name of maintaining discipline or dealing with anti-national elements. Accountability, observed this Court, was one of the facets of the Rule of Law and anyone found to have acted in breach of law could be punished for any such breach. This Court observed: C D E

"In a country governed by the rule of law police excesses whether inside or outside the jail cannot be countenanced in the name of maintaining discipline or dealing with anti-national elements. Accountability is one of the facets of the rule of law. If anyone is found to have acted in breach of law or abused his position while exercising powers that must be exercised only within the parameters of law, the breach and the abuse can be punished. That is especially so when the abuse is alleged to have been committed under the cover of authority exercised by people in uniform. Any such action is also open to critical scrutiny and examination by the Courts. Having said that we cannot ignore the fact that the country today faces challenges and threats from extremist elements operating from within and F G H

A outside India. Those dealing with such elements have at times to pay a heavy price by sacrificing their lives in the discharge of their duties. The glory of the constitutional democracy that we have adopted, however, is that whatever be the challenges posed by such dark forces, the
B country's commitment to the Rule of Law remains steadfast. Courts in this country have protected and would continue to protect the ideals of the rights of the citizen being inviolable except in accordance with the procedure established by law."

C 6. We have referred to the pronouncements of this Court only to show that excesses by those in authority affect not only the immediate victims who suffer them, but should such excesses go unnoticed and unpunished, they have a more pernicious effect in that they tend to erode the Rule of Law,
D violate fundamental rights and shake the faith and the confidence of the people in the efficacy and the credibility of the institutions that are meant to protect the citizens against them and eventually lead to catastrophic results like anarchy and the return of dark days of barbarism.

E 7. It is in the above backdrop that we need to examine the question that falls for determination in the present case which is in essence yet another case accusing the functionaries of the State machinery of highhanded, insensitive and unwarranted acts of misbehavior, that the same constitute offences
F punishable under the Indian Penal Code. The question precisely is whether sanction under Section 197 of the Cr.P.C. was necessary for prosecuting the respondent public servant who is alleged to have acted without the authority of law and without any lawful justification, harassed the complainant, violated her
G right to privacy, and subjected her to an unwarranted public humiliation in -

(a) having entered the house of the complainant-Urmila Devi after sunset equipped, as it were, with video cameras;

H (b) having asked Mr. R.C. Chopra who was present

in the house of the complainant to undress;

(c) having taken the complainant and Mr. Chopra to the Police Station without any reasonable cause and without disclosing to them the offence for which they were being forced to do so;

(d) having subjected them to medical examination without their consent and without there being any cause whatsoever for such an examination;

(e) having threatened them with dire consequences if the complainant did not withdraw the complaint filed by her against one Maya Rani.

8. The High Court has taken the view that the prosecution launched by the appellant against the respondent was legally impermissible without the sanction of the State Government. That view has been assailed before us primarily on the ground that the respondent was neither acting nor could be said to be acting in the purported discharge of his official duty so as to entitle him to the protection of Section 197, Cr.P.C. which to the extent the same is relevant for our purposes reads as under:

"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) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

A (2) xxxxx

(3) xxxxx

(4) xxxxx"

9. A careful reading of the above would show that B protection against prosecution will be available only if the following ingredients are satisfied:

(a) The person concerned is or was a judge or magistrate or public servant.

(b) Such person is not removable from his office C save by the sanction of the Government.

(c) Such person is accused of commission of an offence and

(d) Such offence is committed while the person D concerned was acting or purporting to act in the discharge of his official duties.

10. There is in the instant case no dispute that the first three of the four requirements set out above are satisfied inasmuch as the respondent public servant was not removable E from the office held by him save by or with the sanction of the Government and that he is accused of the commission of offences punishable under the Indian Penal Code. What constituted the essence of the forensic debate at the bar was whether the offences allegedly committed by the respondents F were committed while he was 'acting or purporting to act in the discharge of his official duty'. The words "acting or purporting to act in the discharge of his official duty" appearing in Section 197 (supra) are critical not only in the case at hand but in every other case where the accused invokes the protection of that G provision. What is the true and correct interpretation of that provision is no longer *res integra*. The provision has fallen for consideration on several occasions before this Court. Reference to all those decisions may be unnecessary for the law has been succinctly summed up in the few decisions to

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which we shall presently refer. But before we do so we may point out that the expression "*official duty*" appearing in Section 197 has not been defined. The dictionary meaning of the expression would, therefore, be useful for understanding the expression both literally and contextually. The term *"official"* has been defined in Black's Law Dictionary as under:

> "**Official**... Of or relating to an office or position of trust or authority <official duties>."

11. The term *"office"* is defined in the same dictionary as under:

> "**Office** : A position of duty, trust, or authority, esp. one conferred by a governmental authority for a public purpose<the office of attorney general>."

12. Law Lexicon also gives a similar meaning to the expression *"official" and "office"* as under

> "**Official**....As adjective, belonging to an officer: of a public officer; in relation to the duties of office."
>
> "**Office**...The word "office" refers to the place where business is transacted."

13. The term *"duty"* is defined by Black's Law Dictionary in the following words:

> "**Duty. 1.** A legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a corresponding right."

14. The expression *"official duty"* would in the absence of any statutory definition, therefore, denote a duty that arises by reason of an office or position of trust or authority held by a person. It follows that in every case where the question whether the accused was acting in discharge of his official duty or purporting to act in the discharge of such a duty arises for consideration, the Court will first examine whether the accused was holding an office and, if so, what was the nature of duties cast upon him as holder of any such office. It is only when there is a direct and reasonable nexus between the nature of the

A duties cast upon the public servant and the act constituting an offence that protection under Section 197 Cr.P.C may be available and not otherwise. Just because the accused is a public servant is not enough. A reasonable connection between his duties as a public servant and the acts complained of is what B will determine whether he was acting in discharge of his official duties or purporting to do so, even if the acts were in excess of what was enjoined upon him as a public servant within the meaning of that expression under Section 197 of the Code. We are supported in that view by the decision of this Court in *P. Arulswami v. State of Madras* AIR 1967 SC 776 where a three- C Judge bench of this Court held:

> *"It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even* D *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* E *necessary...It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable."*
>
> (emphasis supplied)

15. The legal position was further elaborated and explained F by another three Judge Bench decision of this Court in *B. Saha and Ors. v. M.S. Kochar (1979) 4 SCC 177,* where this Court held that while Section 197 Cr.P.C. was capable of both liberal and narrow interpretations, a moderate and balanced approach was the correct way to interpret that G provision to avoid an unfair advantage or disadvantage to the accused. This Court, therefore, evolved the test of a "direct and reasonable" connection between the official duty of the accused and the acts constituting the commission of offence. The Court observed:

H "The words 'any offence alleged to have been committed

by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197 (1), an Act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution and the said provision."

(emphasis supplied)

16. The law was reviewed once again by this Court in *General Officer Commanding etc. v. CBI and Anr. etc. (2012) 6 SCC 228*, where this Court relying upon the decisions in ***P.Arulswami*** *and* ***B. Saha's*** cases (supra) summed up the legal position in the following words:

"The protection given Under Section 197 Code of Criminal Procedure is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the

A 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. Use of the expression "official duty" implies that the act or omission must have been done by the public servant in the course
B of his service and that it should have been done in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public
C servant in discharge of official duty. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty, then it must be held to be official to which applicability of Section 197 Code of Criminal
D Procedure cannot be disputed."

(emphasis supplied)

17. The test of direct and reasonable connection between the official duty of the accused and the acts allegedly committed by them is, therefore, the true test to be applied while deciding
E whether the protection of Section 197 of the Cr.P.C. is available to a public servant accused of the commission of an offence. The High Court has not adverted to this test nor has it held that there existed a direct and reasonable connection between the official duty being discharged by the accused
F public servant and the acts committed by him. The High Court has on the contrary misdirected itself when it said that the accused had only committed an act of omission towards his official duties which entitled him to the protection of Section 197 of the Code. The High Court observed:

G "After going through the facts of the above case, one thing is clear that there was an on-going rift between Smt. Maya Devi and Smt. Urmila Devi. They are both quarrelsome in nature and have been instigating each other on a number of occasions. On a complaint made by Smt. Maya Devi,
H who is a widow, inquiry was conducted by Tehsildar who

concluded that Smt. Urmila Devi was residing with Shri R.C.Chopra without being legally wedded to him. To verify this fact the SDM had referred an inquiry to the DSP. In pursuance to this, a team had visited the house of Smt. Urmila Devi at 10:00 P.M. led by DSP Mrs. Rajshri Singh, ASI Onkar Singh and HC Om Parkash to verify the contents of the complaint made by Maya Devi. Shri R.C. Chopra was found residing with Smt. Urmila Devi. They were medically examined. No case was registered and they were not arrested. In a complaint by Maya Rani it was alleged that a divorce petition was pending between Shri R.C. Chopra and his wife Savitri. Shri R.C. Chopra and Smt. Urmila Devi had given false statements to the police in investigation that they did not know each other at all. The allegation that the SDM was present when the investigation team visited the house is not being denied. After marking an inquiry, SDM was ceased of the complaint and his presence at best can be an act of omission towards his official duty. It cannot be said that his presence was not in the course of his service. The allegation in the complaint that he harassed the complainant Smt. Urmila Devi and Shri R.C. Chopra when the investigating team was doing their work can at best be termed as act of omission while doing official duty."

18. It is difficult to appreciate what the High Court meant by saying that the acts of the accused were "at best acts of omission towards official duty". It was not the case of the respondent before the High Court nor is it his case before us that the complaint filed by Maya Devi disclosed any offence which could be taken cognizance of by him as an Executive Magistrate or investigated by the police. Assuming that the complainant and R.C. Chopra were living together even when they were not married to each other, the complaint regarding any such relationship could be filed only by the wife of R.C. Chopra, or the husband of the complainant-Urmila Devi. The complaint filed by Maya Devi could not provide a valid basis for the SDM, the Tehsildar or the Deputy Superintendent of Police concerned to barge into the house of the complainant,

A humiliate or harass her or drag her to the police station without the registration of any case or subject her to an uncalled for medical examination. The test of direct and reasonable connection between the official duty of the respondent Sub Divisional Magistrate and the police officers concerned and the B acts complained of thus fails in the present case especially because there is not even a semblance of a lawful justification forthcoming from the respondent for what he did. Entering the house of a woman, after sunset with a posse of police force, carrying video cameras conducting an unwarranted search of the house, humiliating and invading the privacy of the C complainant, insulting and humiliating R.C. Chopra by asking him to undress and dragging both of them to the police station for medical examination against their wishes, especially when male doctors were asked to examine the complainant which added insult to injury, all remain unsupported by any lawful D justification and have no connection with the duties that were cast upon the respondent as a public servant, even if a complaint alleging an adulterous relationship between the appellant and R.C. Chopra had been received by the SDM. The alleged acts of the respondent cannot, therefore, be said to be E in discharge of his official duties or in the purported discharge of such duties. Public functionaries cannot under the cloak of purported discharge of official duties resort to harassment and humiliation of the citizens on the pretext of a complaint having been received by them, especially when the same does not disclose the commission of any offence triable by the Executive F Magistrate or cognizable by the police; nor was there any other proceeding in connection with which such conduct could be justified in law. The plea of the respondent that the prosecution was barred under Section 197 Cr.P.C. has, therefore, to be rejected.

G 19. With the above observations, I agree that the appeal be allowed with the directions contained in the order proposed by my esteemed Colleague Kalifulla, J.

Bibhuti Bhushan Bose Appeal dismissed.

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