

INSPECTOR OF POLICE AND ANOTHER

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v.

BATTENAPATLA VENKATA RATNAM AND ANOTHER

(Criminal Appeal No. 129 of 2013 etc.)

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April 13, 2015

**[KURIAN JOSEPH AND ADARSH KUMAR GOEL, JJ.]**

*Code of Criminal Procedure, 1973:*

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*s.482 – Proceedings u/ss. 420, 468, 477A, 120B r/w s.109 of IPC – Quashed by High Court on the ground of non-compliance of s.197 Cr.P.C – Held: Proceedings not liable to be quashed as the acts alleged cannot be said to be in discharge of official duty – Penal Code, 1860 – ss.420, 468, 477-A, 120B and 109.*

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*s.197 – Sanction before prosecution of public servant – Prosecuted for offences u/ss 420, 468, 477A, 120B r/w s.109 IPC – Held: Protection u/s 197 is for advancing the cause of honesty, justice and good governance and not for protecting corrupt officials – The acts alleged, cannot be said to be in discharge of official duty – Hence, protection u/s 197 not available in the present case – Penal Code, 1860 – ss.420, 468, 477A, 120B and 109.*

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**Allowing the appeals, the Court**

**HELD: 1. Public servants have been treated as special category u/s. 197 CrPC, to protect them from malicious or vexatious prosecution. Such protection from harassment is given in public interest; the same**

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A cannot be treated as shield to protect corrupt officials. The provisions dealing with Section 197 CrPC must be construed in such a manner as to advance the cause of honesty, justice and good governance. [para 10] [614-E-F]

B *Subramanian Swamy v. Manmohan Singh and another* 2012 (3) SCR 52 = 2012 (3) SCC 64 – relied on.

C 2. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue. If at all the said view of sanction is to be considered, it could be done at the stage of trial only. [para 11] [615-C-D]

D *Rajib Ranjan and others v. R. Vijaykumar* (2015) 1 SCC 513 – relied on.

E *Shambhoo Nath Misra v. State of U.P. and others* 1997 (2) SCR 1139 = 1997 (5) SCC 326; *Parkash Singh Badal v. State of Punjab and others* 2006 (10) Suppl. SCR 197 = 2007 (1) SCC 1 – referred to.

#### Case Law Reference

F 1997 (2) SCR 1139 referred to para 7

2006 (10) Suppl. SCR 197 referred to para 8

(2015) 1 SCC 513 relied on para 9

G 2012 (3) SCR 52 relied on para 10

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 129 of 2013.

H From the Judgment and Order dated 10.12.2007 of the

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High Court of Judicature Andhra Pradesh at Hyderabad in A  
Criminal Petition No. 6213 of 2007

with

CrI. A. Nos. 124, 125, 126, 127, 128, 130, 131, & 132 B  
of 2013.

Guntur Prabhakar, Prerna Singh, D. Mahesh Babu for the  
Appellants.

K. Maruti Rao, K. Subba Rao, Aniruddha P. Mayee, V. C  
Sridhar Reddy, V. N. Raghupathy for the Respondents.

The Judgment of the Court was delivered by

**KURIAN, J.** 1. Whether sanction under Section 197 of D  
The Code of Criminal Procedure, 1973 (hereinafter referred  
to as 'CrPC') is required to initiate criminal proceedings in  
respect of offences under Sections 420, 468, 477A, 120B  
read with 109 of the Indian Penal Code (45 of 1860)  
(hereinafter referred to as 'IPC'), is the question arising for E  
consideration in these cases.

2. The District Registrar, Vijayawada lodged a complaint  
with the Inspector of Police, CBCID Vijayawada on  
07.07.1999. The main allegation against the respondents was F  
that while they were working as Sub-Registrars in various  
offices in the State of Andhra Pradesh, they conspired with  
stamp vendors and document writers and other staff to gain  
monetary benefit and resorted to manipulation of registers and  
got the registration of the documents with old value of the G  
properties, resulting in wrongful gain to themselves and loss  
to the Government, and thereby cheated the public and the  
Government.

3. On the basis of the complaint, F.I.R. No. 35/1999 was H

A registered by the appellant, and after investigation, report under Section 173(2) CrPC against 41 persons including the respondents herein, was submitted before the III Additional Chief Metropolitan Magistrate, Vijayawada. The respondents raised the objection that there was no sanction under Section B 197 CrPC and hence the proceedings could not be initiated.

4. Learned Magistrate on 03.07.2007 passed an order holding that:

C “Whether the sanction is required under Section 197 Cr.PC. or not to be considered during the trial and it is the burden on the complainant to prove that the accused acted beyond in discharge of their official duties and there is no nexus between the acts committed and their D official duties and at this stage the question that the accused acted within their duties cannot be decided.”

5. Aggrieved, respondents moved the High Court under Section 482 CrPC leading to the impugned order whereby the criminal proceedings were quashed on the sole ground E that there was no sanction under Section 197 CrPC, and hence the appeals.

6. Heard Mr. Guntur Prabhakar, Ms. Purna Singh and F Mr. D. Mahesh Babu, learned Counsel appearing for the appellants and Shri K. Maruthi Rao, Mr. K. Subba Rao, Mr. Aniruddha P. Mayee, Mr. V. Sridhar Reddy and Mr. V. N. Raghupathy, learned Counsel appearing for the respondents.

G 7. No doubt, while the respondents indulged in the alleged criminal conduct, they had been working as public servants. The question is not whether they were in service or on duty or not but whether the alleged offences have been H committed by them “while acting or purporting to act in discharge of their official duty”. That question is no more res

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integra. In **Shambhoo Nath Misra v. State of U.P. and others**<sup>[1]</sup>, at paragraph-5, this Court held that: A

“5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained.” B C D

8. In **Parkash Singh Badal v. State of Punjab and others**<sup>[2]</sup>, at paragraph-20, this Court held that: E

“20. The principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public [pic]servant's own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity.” F G

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1 (1997) 5 SCC 326

2 (2007) 1 SCC 1

A and thereafter, at paragraph-38, it was further held that:

B “38. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage.”

C 9. In a recent decision in **Rajib Ranjan and others v. R. Vijaykumar**<sup>[3]</sup>, at paragraph-18, this Court has taken the view that ... “even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted”.

E 10. Public servants have, in fact, been treated as special category under Section 197 CrPC, to protect them from malicious or vexatious prosecution. Such protection from harassment is given in public interest; the same cannot be treated as shield to protect corrupt officials. In **Subramanian Swamy v. Manmohan Singh and another**<sup>[4]</sup>, at paragraph-74, it has been held that the provisions dealing with Section 197 CrPC must be construed in such a manner as to advance the cause of honesty, justice and good governance. To quote:

G “74. ... Public servants are treated as a special class of persons enjoying the said protection so that they can perform their duties without fear and favour and without threats of malicious prosecution. However, the said protection against malicious prosecution which was

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extended in public interest cannot become a shield to protect corrupt officials. These provisions being exceptions to the equality provision of Article 14 are analogous to the provisions of protective discrimination and these protections must be construed very narrowly. These procedural provisions relating to sanction must be construed in such a manner as to advance the causes of honesty and justice and good governance as opposed to escalation of corruption.”

11. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue. Unfortunately, the High Court missed these crucial aspects. The learned Magistrate has correctly taken the view that if at all the said view of sanction is to be considered, it could be done at the stage of trial only.

12. Resultantly, the impugned orders are set aside. Appeals are allowed. The criminal proceedings initiated being of the year 1999, we direct the trial court to dispose of the cases as expeditiously as possible at any date on or before 31.12.2015.

Kalpana K. Tripathy

Appeals allowed.