IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(122) CRM-M-1784-2019 (O & M)
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Jagmohan Sharma ..... Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Anil Mehta, Advocate, for the petitioner.

Mr. Vipul Sherwal, AAG, Haryana.

Mr. Vivek Lamba, Advocate, for the complainant.

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JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of FIR No.201 dated 30.07.2011 under Sections 167, 420, 467, 468, 471, 120B and 218 IPC registered at Police Station Sector 5, Panchkula (Annexure P-1), the order dated 03.12.2018 (Annexure P-2) whereby charges have been framed under Section 467, 468, 471, 166, 120B IPC and Sections 8 & 12 of the Prevention of Corruption Act and all consequential proceedings arising therefrom.

2. The brief facts of the case are that the aforementioned FIR (Annexure P-1) came to be registered at the instance of the complainant-Satyavir Singh Sheoran and reads as under:-

Application for conducting an inquiry into the forgery and manipulating tempering the ACR of applicant and for registration of FIR against the culprits. R/Sir, The applicant submits as under: 1) That the applicant joined service as a 'Forest Ranger' on 07.04.1981 and further was promoted as Haryana Forest Service on 09.07.1999 on the basis of his hard work and having unblemished service record, dedication and scarification to protect the Forest Wealth from "destruction" and "annihilation" without any fear and greed. 2) That according to Punjab Govt. letter No. 126-AS1-64/2377 dated 17.01.64 read with Haryana Govt. letter No.3130-35-71 dated 21.05.1971 and it is settled law that the facts of the confidential report should have brought to the notice of delinquent person during the year of the report and since same should have been recorded with the report itself. In absence of such information or notice, that person is deem to be having good service record. 3) That Govt. of India vide letter No.1015/2010 ASI dated 07.10.10 has directed that Govt. of Haryana vide letter above stated to submit the names of the officers (State Forest Service) Haryana Cadre for promotion to IFS for the year of 2008, 2009 and 2010 and the applicant was hope full that his name will be included in the list of these officers as his all the ACR were very good/Excellent, but some vested interest were not happy with the promotion to the rank of IFS Haryana Cadre) of the applicant and when confidential report of the applicant was in custody of Superintendent for Financial Commissioner and Principal Secretary to the Govt. of Haryana (Forest) for the period 01.04.2009 to 14.07.2009 and someone in the office fraudulently with mala fide intension and to cause wrongful loss to the applicant, forged and manipulated the ACR of the

applicant and word "I agree, which was written by Sh. Jeet Ram, IFS (Rtd) in the ACR of applicant (reviewing authority added words "up to some extent but he is dishonest". 4) That the applicant was shocked to receive the report from the office of Financial Commissioner and Principal Secretary to Govt. of Haryana Forest Department vide Memo No.299-ft-III-2011/1182 dated 01.02.2011 in regard of his ACR and then the applicants served a legal notice u/s 80 CPC to Sh. Jeet Ram, IFS (Rtd) and Sh. Jeet Ram, IFS (Rtd) replied in response of this legal notice that he had written only "I agree" and the rest of the word are not in his hand writing and somebody else has added these words later on. 5) That the applicant under RTI requested the office of Principal Chief Conservator of Forests, Haryana for supply of copy of his ACR which was provided to the applicant and applicant sent the certified copy of ACR to Dr. JassyAnand, Forensic Expert for comparison and the expert prepared his report with photo copy and found that in the ACR column of remarks of reviewing authority dated 28.04.2010 there is an addition I the line "1 agree upto the extent but he is dishonest is not in one hand and differ with I agree". 6) That the ACR of the applicant was forged and tempered when the name of HFS officers were sent for promotion to the post of IFS (7 nos posts of Haryana cadre) and the candidates who were junior in seniority to the applicant who were at Sr. No. 8 to 11 in the list will fraudulently in collusion with Suptt. / some junior official in the office of Superintendent for Financial Commissioner & Principal Secretary to Govt. of Haryana Forest Department, Sector-17, New Mini Sectt., Chandigarh. It is requested to your good self that an inquiry be conducted and those who tempered with ACR of applicant to create hurdles in

my promotion to the post of IFS and forged the official record to destroy the future of applicant, which is a heinous crime should be prosecuted as per law. Applicant SD Satyavir Singh Sheoran.

3. During the course of investigation, the petitioner alongwith other accused came to be nominated as accused and the report under Section 173(2) Cr.P.C. was submitted. The petitioner filed petition (CRM-M-24480-2018) for quashing of the FIR which was came to be withdrawn on 18.12.2018 with the liberty to the petitioner to raise all pleas before the Trial Court at the appropriate stage.

4. Thereafter, charges were framed against the petitioner and his co-accused vide order dated 03.12.2018 (Annexure P-2).

5. The aforementioned FIR (Annexure P-1) and the order framing charges (Annexure P-2) are impugned in the present petition.

6. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case after 06 years on the disclosure statement of the co-accused Virender Sharma and Devender Kumar. Various statements under Section 161 Cr.P.C. have been recorded much after the registration of the FIR which creates a doubt in the case of the prosecution. No motive lay with the petitioner to commit the offence in question as he was already in the zone of consideration for the promotion to the IFS. For four promotion posts, 11 names of officers were sent. The complainant was at Sr. No.5 and the petitioner was at Sr. No.10. The motive to fabricate the ACR lay with the officer at No.6 and not with the

petitioner. While the petitioner had an outstanding record, the complainant's case was one of doubtful integrity and so he could not have been promoted in any case. As the petitioner is a Government servant, the investigating agency had to seek sanction under Section 197 Cr.P.C. prior to the Court taking cognizance and therefore, charges could not have been framed. He, therefore, prays that the FIR (Annexure P-1) and the order framing charges (Annexure P-2) be quashed.

7. The learned counsel for the State and for the complainant-Satyavir Singh Sheoran, on the other hand, contend that the statement of co-accused/Varinder Sharma-Superintendent was recorded during the course of investigation in which he has described in detail as to how and in what manner at the instance of the petitioner, the ACR of the complainant was fabricated in the hand-writing of Devender Kumar-Clerk. The statement of Devender Kumar-Clerk has also been recorded wherein he admitted that he had fabricated the ACR at the instance of the petitioner and Varinder Sharma. Similarly, the statement of Jagdish Nain was recorded during the course of investigation wherein he stated that to get a favourable report regarding the hand-writing of Devender Kumar on the forged ACR, he had paid a bribe to one Dr.Harsh Wardhan of FSL, Madhuban. They further contend that prior sanction under Section 197 Cr.P.C. was not required in the instant case because the petitioner, by allegedly conspiring to fabricate the ACR of a colleagur cannot be said to be acting in discharge of his official

duty. In fact, there is sufficient evidence to frame charges against the petitioner and his co-accused. They, therefore, contend that the present petition is liable to be dismissed.

8. I have heard the learned counsel for the parties.

9. The parameters of quashing of an FIR have been laid down in the judgment of '***State of Haryana & Ors. v. Bhajan Lal & Ors., (1992) Supp (1) SCC 335'*** and the same are reproduced as under:-

> "*102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chaper XIV and of the principles of law enunciated by this Court in a serious of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be excercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
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> > *"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
> > *(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

(3) Where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2)of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10. The Hon’ble Supreme Court in various judgments has held that disputed questions of fact and the defence of an accused cannot be considered to quash an FIR and/or the report under Section 193 of BNSS. Such disputed questions of fact and the defence of an accused can only be adjudicated upon during the course of the Trial. The relevant judgments in this regard are as under:-

In '***Maksud Saiyed versus State of Gujarat & Ors. 2007(4) RCR(Criminal) 406',*** the Hon'ble Supreme Court held as under:-

6. The jurisdiction of the High Court to quash a FIR in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure is well known. The court may not enter into determination of a disputed question of fact at that stage. It may, however, take note of the allegations made in the complaint petition vis-a-vis the conduct of the parties. It is not disputed that the bank had filed an original application before the Debts Recovery Tribunal, Ahmedabad. A civil suit was filed at Vadodara in the year 2003. In the prospectus issued, it was stated :

"Sr. No.	**Suit details**	**Date of Filing**	**Name of the party**	**Branch**	**Amount claimed (Rs. in lacs)**
4	DRT, A 'bad 28.3.03	M/s. Nagami Nicotine Pvt. Ltd.	A.R.B. A'bad	993.74	The case is filed against the Bank for non-submission of export bills and non-releasing of the sanctioned limits. We have taken plea that since the borrower is not clearing the dues of the Bank, Bank has not released the export bills as per procedure of UCPDC rules."

In ***'Koppisetti Subbharao @ Subramaniam versus State of A.P. 2009(2) RCR(Criminal) 860',*** the Hon'ble Supreme Court held as under:-

25. The High Court was justified in holding that disputed questions of fact are involved and the application under section 482 of Code has been rightly rejected. We do not find any scope for interference with the order of the High Court. However, we

make it clear that we have not expressed any opinion on the merits of the case.

In ***'Ashfaq Ahmed Qurereshi and another vesus Namrata Chopra and others 2014(1) RCR(Criminal) 528',*** the Hon'ble Supreme Court held as under:-

4. There is sufficient evidence on record to show that the property belonged not only to the respondent Nos. 1 & 2, but they were the owners alongwith respondent Nos. 3 and 4. The respondent No. 3 has died and respondent No. 4 has been deleted from the array of parties by this court earlier. There is ample evidence on record that the permission had been sought and obtained from Municipal Corporation of Bhopal for raising the construction of a Club House and the land in dispute had been shown as vacant land for parking. It is too late for the respondent Nos. 1 & 2 to say that the respondent Nos. 3 and 4 might have forged their signatures for the reason that it is not their case in the counter affidavit or even before the High Court that they had ever raised any objection or filed any complaint before the police or any competent court for forging their signatures by someone else on the said application. More so, there are disputes regarding partition and demarcation of shares between the respective parties. The sale deeds are also on record that their shares have been sold not only by respondent Nos. 3 & 4 but also by respondent Nos. 1 & 2 subsequently and there is no land available today. No explanation could be furnished by Mr. Prashant Kumar appearing for respondent nos. 1 & 2 as to why this fact had not been brought to the notice of the court.

5. As the case raises a large number of disputed questions of fact, we are of the considered opinion that there was no occasion for the High Court to allow the petition under Section 482 Cr.P.C. and quash the criminal proceedings qua the said respondents.

In ***'Rishipal Singh versus State of U.P. and another 2014(3) RCR(Criminal) 637'*,** the Hon'ble Supreme Court held as under:-

11. This Court in Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. and Others, 2000(2) RCR (Criminal) 122 : 2000 (3) SCC 269, has discussed at length about the scope and ambit while exercising power under Section 482 Cr.P.C. and how cautious and careful the approach of the Courts should be. We deem it apt to extract the relevant portion from that judgement, which reads:

> "Exercise of jurisdiction under inherent power as envisaged in section 482 of the Code to have the complaint or the charge sheet quashed is an exception rather than rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution with the lodgement of First Information Report. The ball is set to roll and thenceforth the law takes it's own course and the investigation ensures in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and it's undue expansion is neither practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge sheet on the fact of it does not constitute or disclose any offence alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situations as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount".

12. This Court in plethora of judgments has laid down the guidelines with regard to exercise of jurisdiction by the Courts under Section 482 Cr.P.C. In State of Haryana v. Bhajan Lal, 1991(1) RCR (Criminal) 383 : 1992 Supp(1) SCC 335, this Court has listed the categories of cases when the power under Section 482 can be exercised by the Court. These principles or the guidelines were reiterated by this Court in (1) Central Bureau of Investigation v. Duncans Agro Industries Ltd., 1996(3) RCR (Criminal) 60 : 1996 (5) SCC 592; (2) Rajesh Bajaj v. State NCT of Delhi, 1999(2) RCR (Criminal) 160 : 1999 (3) SCC 259 and; (3) Zandu Pharmaceuticals Works Ltd. v. Mohd. Sharaful Haque & Anr., 2004(4) RCR (Criminal) 937 : (2005) 1 SCC 122. This Court in Zandu Pharmaceuticals Ltd., observed that:

> "The power under section 482 of the Code should be used sparingly and with to prevent abuse of process of Court, but not to stifle legitimate prosecution. There can be no two opinions on this, but if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under section 482 of the Code must be exercised and proceedings must be quashed". Also see Om Prakash and Ors. v. State of Jharkhand, 2012(4) RCR (Criminal) 662 : 2012(5) Recent Apex Judgments (R.A.J.) 127 : 2012 (12) SCC 72.

What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that

quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 Cr.P.C. While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact.

In ***'Tilly Gifford versus Michael Floyd Eshwar & Anr. 2018(1) RCR (Criminal) 350'*,** the Hon'ble Supreme Court held as under:-

4. A perusal of the order of the High Court released on 21.05.2015 would indicate that the High Court has gone far beyond the contours of its power and jurisdiction under Section 482 Cr.P.C., 1973 to quash a criminal proceeding, the extent of such jurisdiction having been dealt with by this Court in numerous pronouncements over the last half century. Time and again, it has been emphasised by this Court that the power under Section 482 Cr.P.C., 1973 would not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused. The power to interdict a criminal proceeding at the stage of investigation is even more rare. Broadly speaking, a criminal investigation, unless tainted by clear mala fides, should not be foreclosed by a Court of Law.

In '***Ravi Karumabaiah versus State and Anr. 2015(37) RCR(Criminal) 751',*** the Delhi High Court held as under:-

19. As alleged by the petitioner, there are disputed questions of facts which can be considered by learned Trial Court during trial. The petitioner will get the liberty to defend his case, but at

this stage the trial cannot be stopped by quashing the proceedings, as sought by petitioner. Moreover, the petitioner has failed to establish any illegality or perversity in the orders passed by learned Trial Court as well as learned Revisional Court. Therefore, I am not inclined to exercise inherent powers under Section 482 Cr P C of this Court.

In '***Sumit Bansal versus M/s MGI Developers And Promoters And Another 2026(1) RCR(Criminal) 419',*** the Supreme Court held as under:-

28. On these lines, it is apt clear that even though the powers under Section 482 of the Cr.PC are very wide, its conferment requires the High Court to be more cautious and diligent. While examining any complaint or FIR, the High Court exercising its power under this provision cannot go embarking upon the genuineness of the allegations made. The Court must only consider whether there exists any sufficient material to proceed against the accused or not.

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34. Whether those cheques were issued as alternative or supplementary instruments, or represented fresh undertakings, is a disputed question of fact requiring evidence at the time of trial and cannot be resolved at the threshold. Questions such as whether the firm's cheques were issued in substitution of the personal cheques, whether the parties treated them as alternative securities, and whether both were intended to be simultaneously enforceable, are all mixed questions of fact. The inherent jurisdiction of the High Court under Section 482 of the Cr.PC cannot be used to decide such disputed issues.

11. A perusal of the aforesaid judgments would show that an FIR and all subsequent proceedings arising therefrom can be quashed where a bare perusal of the FIR and the uncontroverted allegations do not constitute an offence or where the allegations levelled are completely absurd and improbable on the face of it. The defence of the accused and disputed questions of fact cannot be examined in proceedings under the 482 Cr.P.C. (528 of BNSS, 2023).

12. As regards requirement of sanction for prosecution under Section 197 Cr.P.C., the Hon'ble Supreme Court in '***Om Prakash Yadav versus Niranjan Kumar Upadhyay & Ors. 2024 INSC 979',*** held as under:-

> *65. Thus, the legal position that emerges from a conspectus of all the decisions referred to above is that it is not possible to carve out one universal rule that can be uniformly applied to the multivarious facts and circumstances in the context of which the protection under section 197 CrPC, 1973 is sought for. Any attempt to lay down such a homogenous standard would create unnecessary rigidity as regards the scope of application of this provision. In this context, the position of law may be summarized as under: -*
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> > (i) The object behind the enactment of section 197 CrPC, 1973 is to protect responsible public servants against institution of possibly false or vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act in their official capacity. It is to ensure that the public servants are not prosecuted for anything which is done by them in the discharge of their official duties, without any

reasonable cause. The provision is in the form of an assurance to the honest and sincere officers so that they can perform their public duties honestly, to the best of their ability and in furtherance of public interest, without being demoralized.

(ii) The expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" in section 197 CrPC, 1973 must neither be construed narrowly nor widely and the correct approach would be to strike a balance between the two extremes. The section should be construed strictly to the extent that its operation is limited only to those acts which are discharged in the "course of duty". However, once it has been ascertained that the act or omission has indeed been committed by the public servant in the discharge of his duty, then a liberal and wide construction must be given to a particular act or omission so far as its "official" nature is concerned.

(iii) It is essential that the Court while considering the question of applicability of section 197 CrPC, 1973 truly applies its mind to the factual situation before it. This must be done in such a manner that both the aspects are taken care of viz., on one hand, the public servant is protected under section 197 CrPC, 1973 if the act complained of falls within his official duty and on the other, appropriate action be allowed to be taken if the act complained of is not done or purported to be done by the public servant in the discharge of his official duty.

(iv) A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such that it lies within the scope and range of his official duties. The act complained of must be integrally connected or directly linked to his duties as a public servant for the purpose of affording protection under section 197 CrPC, 1973. Hence, it is not the duty which requires an examination so much as the "act" itself.

(v) One of the foremost tests which was laid down in this regard was - whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.

(vi) Later, the test came to be re-modulated. It was laid down that there must be a reasonable connection between

the act done and the discharge of the official duty and the act must bear such relation to the duty such that the accused could lay a reasonable, but not a pretended or fanciful claim, that his actions were in the course of performance of his duty. Therefore, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be committed by the public servant either in his official capacity or under the color of the office held by him such that there is a direct or reasonable connection between the act and the official duty.

(vii) If in performing his official duty, the public servant acts in excess of his duty, the excess by itself will not be a sufficient ground to deprive the public servant from protection under section 197 CrPC, 1973 if it is found that there existed a reasonable connection between the act done and the performance of his official duty.

(viii) It is the "quality" of the act that must be examined and the mere fact that an opportunity to commit an offence is furnished by the official position would not be enough to attract section 197 CrPC, 1973.

(ix) The legislature has thought fit to use two distinct expressions "acting" or "purporting to act". The latter expression means that even if the alleged act was done under the color of office, the protection under section 197 CrPC, 1973 can be given. However, this protection must not be excessively stretched and construed as being limitless. It must be made available only when the alleged act is reasonably connected with the discharge of his official duty and not merely a cloak for doing the objectionable act.

(x) There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down such a rule. However, a "safe and sure test" would be to consider if the omission or neglect on the part of the public servant to commit the act complained of would have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, the protection under section 197 CrPC, 1973 can be granted since there was every connection with the act complained of and the official duty of the public servant.

> (xi) The provision must not be abused by public servants to camouflage the commission of a crime under the supposed color of public office. The benefit of the provision must not be extended to public officials who try to take undue advantage of their position and misuse the authority vested in them for committing acts which are otherwise not permitted in law. In such circumstances, the acts committed must be considered dehors the duties which a public servant is required to discharge or perform.
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> (xii) On an application of the tests as aforesaid, if on facts, it is prima facie found that the act or omission for which the accused has been charged has a reasonable connection with the discharge of his official duty, the applicability of section 197 CrPC, 1973 cannot be denied.

In ***'Shadakshari versus State of Karnataka & Anr. 2024(1) RCR (Criminal) 730',*** the Hon'ble Supreme Court held as under:-

> *18. As per sub section (1) of Section 197 where 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 of the Central Government or the State Government, as the case may be.*
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> *19. The ambit, scope and effect of Section 197 Cr.PC has received considerable attention of this court. It is not necessary to advert to and dilate on all such decisions. Suffice it to say that the object of such sanction for prosecution is to protect a public servant discharging official duties and functions from undue harassment by initiation of frivolous criminal proceedings.*

20. In State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40, this court explained the underlying concept of protection under Section 197 and held as follows:

> "7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it

> possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

21. This aspect was also examined by this court in Shambhu Nath Misra (supra). Posing the question as to whether a public servant who allegedly commits the offence of fabrication of records or misappropriation of public funds can be said to have acted in the discharge of his official duties. Observing that it is not the official duty to fabricate records or to misappropriate public funds, this court held as under:

> "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."

22. Even in D. Devaraja (supra) relied upon by learned counsel for respondent No. 2, this court referred to Ganesh Chandra Jew (supra) and held as follows:

> "35. In State of Orissa v. Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104] this Court interpreted the use of the expression "official duty" to imply that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. section 197 of the Code of Criminal Procedure, 1973 does not extend its protective cover to every act or omission done by a public servant while in service. The scope of operation of the section is restricted to only those acts or omissions which are done by a public servant in discharge of official duty."

23. Thus, this court has been consistent in holding that Section 197 Cr.PC does not extend its protective cover to every act or omission of a public servant while in service. It is restricted to only those acts or omissions which are done by public servants in the discharge of official duties.

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25. The question whether respondent No.2 was involved in fabricating official documents by misusing his official position as a public servant is a matter of trial. Certainly, a view can be taken that manufacturing of such documents or fabrication of records cannot be a part of the official duty of a public servant. If that be the position, the High Court was not justified in quashing the complaint as well as the chargesheet in its entirety, more so when there are two other accused persons besides respondent No.2. There is another aspect of the matter. Respondent No.2 had unsuccessfully challenged the complaint in an earlier proceeding under Section 482 Cr.PC. Though liberty was granted by the High Court to respondent No.2 to challenge any adverse report if filed subsequent to the lodging of the complaint, instead of confining the challenge to the

chargesheet, respondent No.2 also assailed the complaint as well which he could not have done.

26. That being the position, we are of the unhesitant view that the High Court had erred in quashing the complaint as well as the chargesheet in its entirety. Consequently, we set aside the order of the High Court dated 25.11.2020 passed in Criminal Petition No. 4998/2020. We make it clear that observations made in this judgment are only for the purpose of deciding the present challenge and should not be construed as our opinion on merit. That apart, all contentions are kept open.

13. A reading of the aforementioned judgments would show that forgery of a document cannot be said to be done in the discharge or purported discharge of official duties. In fact, the act committed must be integrally connected or perfectly linked to the duties of a public servant for being accorded to the protection under Section 197 Cr.P.C.

14. As regards framing of charges in '***Union of India versus Prafulla Kumar Samal and another 1979 AIR Supreme Court 366',*** the Hon'ble Supreme Court has held that grave suspicion is sufficient to frame charges.

15. Coming back to the facts of the present case, the contention of the petitioner that he had no motive to commit the offence in question being at Sr. No.10 as against the complainant who was at Sr. No.5 cannot be adjudicated upon in summary proceedings under Section 482 Cr.P.C. (528 BNSS). Similarly, the contention that the complainant could not have been

considered for promotion due to his ACRs not being up to the mark as against the petitioner who was an outstanding officer which fact establishes that the petitioner did not have the motive to commit the offence cannot be gone into in a petition under Section 482 Cr.P.C. (Section 528 BNSS) as it would amount to adjudicating upon disputed questions of fact which is the domain of the Trial Court.

Prima facie, the statements of Varinder Sharma-Superintendent and Devender Kumar-Clerk show that at the behest of the petitioner, Devender Kumar forged the ACR of the complainant and then paid accused-Jagdish Nain to obtain a favourable hand-writing report from FSL Madhuban.

For the offences of forgery etc., sanction under Section 197 Cr.P.C. is not required, moreso, in a case when it pertains to the forgery of an ACR of a colleague. In fact, the petitioner could not be said to be acting in discharge of his official duty while conspiring to forge the said ACR.

As regards the challenge to the order framing charges (Annexure P-2), the material on record is sufficient to frame charges against the petitioner and his co-accused as there is grave suspicion that the petitioner and his co-accused have committed the offences in question.

16. It may not be out of place to mention here that the petitioner had initially filed CRM-M-24480-2018 seeking quashing of the FIR (Annexure P-1). It appears that when the Court was not inclined to quash

the same, he withdrew the petition with liberty to approach the Trial Court. Thereafter, charges came to be framed, pursuant to which the instant second petition had been filed. Nothing new has come on record to persuade this Court to take a different view then that taken earlier. On the contrary, 05 out of the 38 prosecution witnesses already stand examined. At this stage, the question of quashing of the FIR (Annexure P-1) or the order framing charges (Annexure P-2) does not arise.

16. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

17. The Trial Court is directed to expedite the hearing of the case and conclude the same as expeditiously as possible but preferably within a period of 06 months from the next date of hearing fixed before it.

18. The pending application(s), if any, shall stand disposed of accordingly.

February 17, 2026 **(JASJIT SINGH BEDI)**
sukhpreet **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No