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HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 786 of 2017

- Ram Kumar Dewangan S/o Late Pachphod Dewangan, Aged About 63 Years Retd. Inspector Krishi Mandi R/o Kota, District Bilaspur, Chhattisgarh

---- Petitioner

Versus

- State of Chhattisgarh Through E.O.W. / A.C.B. District Raipur, Chhattisgarh

---- Respondent

For Petitioner	:	Shri Rakesh Kumar Shukla, Advocate
For Respondent-State	:	Shri Adhiraj Surana, Dy. GA for the State

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

11/04/2018

1. Heard.

2. The instant petition is against the order dated 19.01.2017 passed by First Additional Sessions Judge, Surajpur, District Surajpur, whereby learned Court below has allowed the revision filed by the State and directed to proceed for the criminal case against the petitioner.

3. Brief facts of this case are that the charge-sheet was filed against the petitioner Ram Kumar Dewangan and other co-accused in the year 2001-2002 before the Chief Judicial Magistrate, Surajpur that the petitioner while was working in the Krishi Upaj Mandi Samiti, Surajpur (hereinafter referred to as ' the Mandi') as Assistant Sub-Inspector, he along with the others prepared forged bill and shown purchase of paddy of 64473.79 quintal of Rs.3,56,90,172.70. It is stated that actually on physical verification it was

found that only 33,697.88quintal paddy was purchased and for which an amount of Rs.1,84,38,245.20 was paid and rest of the paddy of 30,773.91quintal which was valued Rs.1,72,51,927.50 were shown to have purchased outside the Mandi. The bills for such purchase were shown were on the name of brokers and the names of farmers were not shown in the list maintained by the Mandi. It was stated that thereby the petitioner along with the other co-accused has prepared the forged bill and document and shown the purchase of paddy which was actually not done. It is alleged that the petitioner along with the other co-accused bypassing the Act and Rules of the Krishi Upaj Mandi, purchased the paddy not from the farmers and false agreement was issued to the brokers thereby extended benefit to the brokers, which caused loss to the State. In a result, offence was investigated and thereafter charge-sheet under Sections 420, 467, 468, 471 & 120-B IPC was filed. The Charge-sheet having been filed before the CJM, Surajpur, the CJM refused to take cognizance against the petitioner on the ground that sanction under Section 197 Cr.P.C. was not obtained by the State to prosecute the petitioner he being a public servant. The said order was subject of challenge before the First Additional Sessions Judge, Surajpur, District Surajpur, wherein the Sessions Judge by order dated 19.01.2017 has observed that the preparation of forged bill do not come within the purview of official act, as such allowed the revision and directed for prosecution to be continued. The said order of revision granting prosecution is under challenge before this Court.

4. Learned counsel for the petitioner submits that at the same time when the charge-sheet was filed against one more accused namely Shiv Charan Ram, who was the Junior Inspector in the Mandi the sanction to prosecute under Section 197 Cr.P.C. was obtained. However, in respect of the

present petitioner, the sanction under Section 197 Cr.P.C. was not obtained, therefore, the prosecution could not have acted in a pick and choose manner. He would further submit that in the circumstances, the prosecution cannot adopt discriminatory method against the petitioner and if the sanction was obtained against Shiv Charan Ram, the similar sanction under Section 197 Cr.P.C. should have been obtained before prosecuting the present petitioner also otherwise the prosecution cannot proceed.

5. Per contra, learned State counsel opposes the arguments advanced by learned counsel for the petitioner and submits that the order of the revisional Court is well merited, which do not call for any interference.

6. Perusal of the order would show that the charge-sheet under Sections 420, 467, 468, 471 read with Section 120 B IPC was filed against the petitioner and one Shiv Charan Ram. The allegations and the order as would reveal that the allegation on the petitioner is that in the year 2001 and 2002, the petitioner along with the others had purchased the paddy from the brokers and not from the real farmers by preparation of forged bill. It is further alleged that the petitioner along with the other co-accused by such act has misappropriated an amount of Rs.1,72,51,927.50 by transacting outside the premises of the Mandi by ignoring the Krishi Upaj Mandi Act and Rules and the direction given to them. It is further alleged that the paddy was purchased and transacted in the private nature, which was shown to have happened within the premises of the Mandi by showing the fake document of like nature. It is the case of prosecution that the such act came to fore when physical verification of the paddy was made on the spot. Therefore, prima facie the allegations are that the petitioner along with the others have committed the act outside the Mandi premises for purchase of paddy from the brokers, and bills were fabricated to show it inside the premises of the

Mandi. Therefore, the entire question falls for consideration as to whether such act of preparation was done by the petitioner in discharge of official duty so as to attract pre-requisite sanction under Section 197 of Cr.P.C.

7. Prima facie, the act/complaint alleged that all the criminal conspiracy and fabrication of documents were shown to have prepared outside the premises of the Mandi but was shown to have taken place inside the premises of Mandi thereby financial misappropriation was done so as to cause loss to the State.

8. The Supreme Court in the matter of ***Shambhoo Nath Misra Vs. State of U.P. & others {AIR 1997 SC 2102}*** has held thus in para 5:-

> **"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 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 record 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 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."

9. Further the Supreme Court in case of **State of *Uttar Pradesh Vs. Paras Nath Singh {(2009) 6 SCC 372}*** has examined the expression discharge of official duty. It further reiterated the case of ***B. Saha V. M.S. Kochar {(1979) 4 SCC 177}*** wherein it is held as under:-

> **"6.** XXX XXX XXX
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> XXX XXX XXX
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> XXX XXX XXX

> ***11.*** Such being the nature of the provision, the question is how should the expression, 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', be understood? What does it mean? 'Official' according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In B. Saha and Ors. v. M. S. Kochar (1979 (4) SCC 177) it was held :(SCC pp. 184-85 para 17)
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> > ***17.***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 in original)

10. The Court further reiterated the view taken in the cases of ***State of Kerala Vs. V. Padmanabhan Nair {(1999) 5 SCC 690}, Amrik Singh V. State of Pepsu (AIR 1955 SC 309)*** and ***Shreekantiah Ramayya Munipalli V. State of Bombay (AIR 1955 SC 287)*** and has held that the offence under Sections 467, 468 and 471 IPC relate to forgery of valuable security, Will etc; forgery for purpose of cheating and using as genuine a forged document respectively. It is no part of the duty of a public servant while discharging his official duties to commit forgery of the type covered by the aforesaid offences. Want of sanction under Section 197 of the Code is, therefore, no bar.

11. Likewise, recently in the case of **Devinder Singh & others Vs. State of Punjab**$_{\text{THROUGH CBI}}$ **{(2016) 12 SCC 87}** has laid down the nexus test under

Section 197 of the Cr.P.C. and has laid the emphasis on examining that whether the act complained was in discharge of his official capacity and when there is no reasonable nexus with the official duty and the complaint is made, then in such case, has laid down the principle as under:-

> **"39.**The principles emerging from the aforesaid decisions are summarized hereunder :
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> **39.1**. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.
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> **39.2** Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.
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> **39.3** Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under section 197 Cr.P.C. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.
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> **39.4** In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.
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> **39.5** In case sanction is necessary it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.
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> **39.6** Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.
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> **39.7**. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of

accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.

39.9 In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial."

12. Considering the prima facie allegations, the act complaint cannot be said to be within the ambit of the official act of the petitioner to transact outside the Mandi and to show it has happened inside the Mandi on the basis of fabricated documents. The argument advanced by learned counsel for the petitioner cannot come to the rescue of the petitioner for the reason that as held by the Supreme Court in the matter of ***Basawaraj and Another v. Special Land Acquisition Officer***[1] that negative equality against statute cannot be claimed by a person. It was further held that the mistake cannot create a legal right to get the same relief and the equality cannot be claimed in illegality as such cannot be enforced in a negative manner.

13. In a result, the order impugned whereby the prosecution has been allowed to continue by the revisional Court cannot be faulted. The petition has no merit. It is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu

1*(2013) 14 SCC 81*