SURINDERJIT SINGH MAND & ANR. A

v.

STATE OF PUNJAB & ANR.

(Criminal Appeal No. 565 of 2016)

JULY 05, 2016 B

[JAGDISH SINGH KHEHAR AND C. NAGAPPAN, JJ.]

Code of Criminal Procedure, 1973:

s.197 – Sanction before prosecution – Arrest of one person by police officials on 28.6.1999 – Complaint by mother of the C *arrestee alleging illegal and unauthorised detention of her son from 24.6.1999 to 28.6.1999 – Prosecution against six police officials after obtaining sanction u/s. 197 – Application of the complainant u/s. 319 for taking cognizance against the appellants-police officials – Charges framed against appellants – Assailed in* D *Revision on the ground that appellants could not have been prosecuted in absence of sanction for prosecution – Revision dismissed by High Court – On appeal, held: For applying s.197, it has to be ascertained as to whether the alleged offence had been committed "while acting or purporting to act in the discharge of his official duty" – In the present case, the period of apprehension* E *from 28.6.1999 (when arrest was admitted) can be considered to have been made "while acting or purporting to act in the discharge of their official duty", but not the period from 24.6.1999 to 28.6.1999 – Therefore, sanction for prosecution in respect of the appellants-accused was not required.*

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ss. 197, 319 – Scope of s.197 – Whether the mandate of s.197 would extend to cases where cognizance taken under s.319 Cr.P.C. – Held : Mandate of sanction u/s.197 is a mandatory pre-requisite, before a court of competent jurisdiction takes cognizance, even when cognizance is taken u/s. 319 Cr.P.C.

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Dismissing the appeal, the Court

HELD: 1. The alleged action constituting the allegations levelled against the appellants, is based on the arrest and detention of 'N' from 24.06.1999 upto 28.06.1999 (before, he

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A was admitted to have been formally arrested on 28.06.1999). Insofar as the power of arrest and detention by police officials/ officers is concerned, reference may be made to Sections 36, 49, 50 and 50A of Cr.P.C. In view of s. 36 Cr.P.C, there cannot be any serious doubt about the fact, that the appellants were holding the rank of Deputy Superintendent of Police, at the B relevant time (from 24.06.199 to 28.06.1999). Both the appellants were "...officers superior in rank to an officer in charge of a police station...". Both the appellants were therefore possessed with the authority to detain and arrest, 'N' at the relevant time (from 24.06.1999 to 28.06.1999). The question C for complying with the requirements in Sections 49, 50 and 50A does not arise for the period under reference (from 24.06.1999 to 28.06.1999), because 'N' according to official police records, was arrested only on 28.06.1999. [Paras 12, 13 and 14][670-G-H; 671-A-D, F]

D 1.2 Court is obliged to embark upon, when confronted with a proposition of the nature in hand, is to ascertain as to whether the alleged offence, attributed to the accused, had been committed by an accused "while acting or purporting to act in the discharge of his official duty". The official arrest of 'N' in terms of the provisions of Cr.P.C.would extend during the period E from 28.06.1999 to 30.06.1999. The above period of apprehension can legitimately be considered as, having been made "while acting or purporting to act in the discharge of their official duties". The factual position expressed by the appellants is, that 'N' was not detained for the period from 24.06.1999 to F 28.06.1999. His detention during the above period, if true, would certainly not emerge from the action of the accused while acting or purporting to act in the discharge of their official duties. If it emerges from evidence adduced before the trial Court, that 'N' was actually detained during the period from 24.06.1999 to 28.06.1999, the said detention cannot be taken to have been G made by the accused while acting or purporting to act in the discharge of their official duties. More so, because it is not the case of the appellants, that they had kept 'N' in jail during the period from 24.06.1999 to 28.06.1999. [Paras 12 and 17][670-F; 673-E-H; 674-A]

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1.3 Therefore, sanction u/s. 197 Cr.P.C., for prosecution of the accused in relation to the detention of 'N' for the period from 24.06.1999 to 28.06.1999, would not be required, before a Court of competent jurisdiction, takes cognizance with reference to the alleged arrest of 'N'. [Para 17][674-B-C]

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P.P. Unnikrishnan v. Puttiyottil Alikutty **(2000) 8 SCC 131 : 2000 (3) Suppl. SCR 142 – relied on.**

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Dr. Hori Ram Singh v. Emperor **AIR (1939) FC 43;** *Sankaran Moitra v. Sadhna Das* **(2006) 4 SCC 584 : 2006 (3) SCR 305;** *R. Balakrishna Pillai v. State of Kerala* **(1996) 1 SCC 478 : 1995 (6) Suppl. SCR 236;** *P.K. Pradhan v. State of Sikkim* **(2001) 6 SCC 704 : 2001 (3) SCR 1119;** *Om Prakash v. State of Jharkhand* **(2012) 12 SCC 72 : 2012 (9) SCR 125;** *Usharani v. The Commissioner of Police* **(2015) 2 KarLJ 511 – referred to.**

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2. Under Section 197 of Cr.P.C. and/or sanction mandated under a special statute (as postulated under Section 19 of the Prevention of Corruption Act) would be a necessary pre-requisite, before a Court of competent jurisdiction, takes cognizance of an offence (whether under the Indian Penal Code, or under the concerned special statutory enactment). The procedure for obtaining sanction would be governed by the provisions of Cr.P.C. and/or as mandated under the special enactment. The words in Section 197 of Cr.P.C. are, "...no court shall take cognizance of such offence except with previous sanction...". Likewise sub-section (1) of Section 19 of the Prevention of Corruption Act provides,"No Court shall take cognizance.. except with the previous sanction...". The mandate is clear and unambiguous, that a Court "shall not" take cognizance without sanction. Therefore, a Court just cannot take cognizance, without sanction by the appropriate authority. Thus, it cannot be said that where cognizance is taken under Section 319 of Cr.P.C., sanction either under Section 197 of Cr.P.C. (or under the concerned special enactment) is not a mandatory pre-requisite. However, it does not mean that the determination rendered by a Court under Section 319 Cr.P.C., is subservient to the decision of the competent authority under Section 197. The grant of sanction

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under Section 197, can be assailed by the accused by taking recourse to judicial review. Likewise, the order declining sanction, can similarly be assailed by the complainant or the prosecution. [Paras 22 and 23][681-E-H; 682-B-C]

Dilawar Singh vs. Parvinder Singh alias Iqbal Singh **(2005) 12 SCC 709 : 2005 (5) Suppl. SCR 83;** *Paul Varghese vs. State of Kerala* **(2007) 14 SCC 783 : 2007 (4) SCR 1155;** *Subramanian Swamy vs. Manmohan Singh* **(2012) 3 SCC 64 : 2012 (3) SCR 52 – relied on.**

Case Law Reference

AIR (1939) FC 43	**referred to**	**Para 10**
2006 (3) SCR 305	**referred to**	**Para 10**
1995 (6) Suppl. SCR 236	**referred to**	**Para 10**
2001 (3) SCR 1119	**referred to**	**Para 10**
2012 (9) SCR 125	**referred to**	**Para 11**
(2015) 2 KarLJ 511	**referred to**	**Para 11**
2000 (3) Suppl. SCR 142	**relied on**	**Para 16**
2005 (5) Suppl. SCR 83	**relied on**	**Para 21**
2007 (4) SCR 1155	**relied on**	**Para 21**
2012 (3) SCR 52	**relied on**	**Para 21**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 565 of 2016.

From the Judgment and Order dated 09.01.2008 in Criminal Revision No. 348 of 2007 passed by the High Court of Punjab and Haryana, Chandigarh.

Ram Jethmalani, Sr. Adv., Chirag Madan, Anirudh Anand, Ajay Awasthi, Anubhav, P. R. Mala, Yash Pal Dhingra, Advs. for the Appellants.

Jayant K. Sud, AAG, Ms. Jasleen Chahal, Asst. AG, Varinder Singh Rana, Jeevan Gautam (For Subhasish Bhowmick), Honney Khanna, Ajay P. Tushir (For Kuldip Singh), Advs. for the Respondents.

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1. Leave granted. A

2. Surinderjit Singh Mand and P.S. Parmar, the appellants before this Court, while holding the rank of Deputy Superintendent of Police, were posted in District Kapurthala, in the State of Punjab, during the relevant period in 1999. Piara Lal (holding the rank of Assistant Sub-Inspector), was also posted at Kapurthala, at the same time. The above B mentioned Piara Lal's son - Neeraj Kumar was officially arrested on 28.06.1999. The arrest of Neeraj Kumar, was made in furtherance of a First Information Report bearing No.30, which was registered at Police Station City, Kapurthala on 03.03.1999. Before the arrest of Neeraj Kumar, his father Piara Lal was placed under suspension on 10.06.1999. The aforesaid FIR No.30, we were informed, was in respect of C complaints made by residents of Kapurthala, pertaining to theft of motorcycles and other vehicles in the city.

3. It was pointed out, that while investigating into the allegations contained in the complaint dated 03.03.1999, three persons including Neeraj Kumar were arrested on 28.06.1999. Neeraj Kumar was granted D bail on 30.06.1999. In the above view of the matter, it is apparent that Neeraj Kumar had remained in jail for just about two/three days (from 28.06.1999 to 30.06.1999). Usha Rani - mother of Neeraj Kumar (detained during the investigation of FIR No. 30), filed a representation asserting, that her son had been detained on 24.06.1999 (and not on 28.06.1999, as alleged). That would make the duration of his arrest as E of six/seven days. The present controversy pertains to the additional four/five days of the arrest of Neeraj Kumar. Her complaint highlighted, that her son – Neeraj Kumar was apprehended illegally and unauthorisedly for the period from 24.06.1999 to 28.06.1999 i.e., for four/five days. F

4. Investigation into the complaint made by Usha Rani, was directed to be conducted in the first instance, by Munish Chawla, IPS. In the report submitted by him, it was concluded, that the charge levelled by the mother of Neeraj Kumar, could not be substantiated. Yet again, based on the accusations levelled by Usha Rani, another investigation was ordered. This time, it was required to be conducted by M.F. Farooqi, G IPS. Yet again, in the second enquiry, it was concluded, that there was no material to establish that Neeraj Kumar had been in police detention from 24.06.1999 onwards, till his formal arrest on 28.06.1999. Despite the two reports submitted by two senior police officers, wherein it was found that there was no substance in the allegations levelled by Usha H

A Rani, Gurpreet Deo, IPS, at her own, investigated into the matter. She too arrived at the same conclusion, that there was no substance in the claim of Usha Rani, that her son had been illegally and unauthorisedly detained by police personnel, prior to his formal arrest on 28.06.1999.

5. Usha Rani (mother of Neeraj Kumar) made another written B complaint, this time to the Hon'ble Administrative Judge (a sitting Judge of the Punjab and Haryana High Court) having charge of Sessions Division, Kapurthala, on 01.10.1999. In her complaint, she reiterated, that her son Neeraj Kumar had been illegally detained by police personnel, on 24.06.1999. The Hon'ble Administrative Judge marked the complaint, dated 01.10.1999, to an Additional District and Sessions Judge, posted in C the Sessions Division of Kapurthala, requiring him to look into the matter. On 25.09.2000, the concerned Additional District and Sessions Judge, Kapurthala, submitted a report concluding, that Neeraj Kumar had been falsely implicated, because he and some other accused had been discharged by a Court, from the proceedings initiated against them. Based D on the aforesaid report dated 25.09.2000, First Information Report bearing No.46, came to be registered at Police Station City Kapurthala, on 22.10.2002.

6. After completion of police investigation in the above FIR No.46, a chargesheet was filed against six police officials, in the Court of the E Chief Judicial Magistrate, Kapurthala, on 25.05.2003. Before the aforesaid chargesheet was filed, the prosecution had obtained sanction under Section 197 of the Code of Criminal Procedure (hereinafter referred to as, the 'Code') for prosecuting the six concerned police officials. It is also relevant to mention, that it was the express contention of the appellants, that on the conclusion of investigation, no involvement F of the appellants had emerged, and therefore, their names were recorded in Column No.2. It was submitted, that the aforesaid depiction of the names of the appellants in Column No.2 by itself, demonstrates their innocence (with reference to the allegations made by Usha Rani, that her son Neeraj Kumar had been illegally detained from 24.06.1999).

G 7. It is not a matter of dispute, that after the statements of three prosecution witnesses were recorded by the trial Court, Usha Rani moved an application under Section 319 of the 'Code' before the trial Judge – the Chief Judicial Magistrate, Kapurthala, for taking cognizance against the appellants herein. The aforesaid application was allowed by the trial

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Court, on 06.09.2003. Thereupon, the appellants were summoned by the Chief Judicial Magistrate, Kapurthala, to face trial. The appellants contested their summoning before the trial Court by asserting, that their prosecution was unsustainable in law, because no sanction had been obtained by the prosecution under Section 197 of the 'Code', before cognizance was taken against them.

8. Consequent upon the appellants having been summoned by the trial Court, charges were framed against them on 23.12.2006. The order passed by the trial Court framing charges against the appellants on 23.12.2006 was assailed by the appellants, through Criminal Revision No.348 of 2007. The primary submission advanced on behalf of the appellants before the High Court was, that the Chief Judicial Magistrate, Kapurthala, could not have proceeded against them, in the absence of sanction of prosecution, under Section 197 of the 'Code'. The High Court, by its order dated 09.01.2008, dismissed the Criminal Revision filed by the appellants. The above order dated 09.01.2008 is subject matter of challenge through the instant appeal.

9. Mr. Ram Jethmalani, learned senior counsel appearing on behalf of the appellants, in order to support the claim of the appellants, has drawn our attention to Section 197 of the 'Code', which is extracted hereunder:

> "197. Prosecution of Judges and public servants.
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> (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 (save as otherwise provided in the Lokpal and Lokayuktas Act, 2013)-
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> (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

A the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause B (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

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C (4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

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(emphasis is ours)

The learned senior counsel highlighted, that sanction under Section 197 of the 'Code' is mandatory, where the concerned public servant is alleged to have committed an offence "while acting or purporting to act E in the discharge of his official duty".

10. In order to demonstrate the ambit and scope of the term "while acting or purporting to act in the discharge of his official duty", learned senior counsel placed reliance on Dr. Hori Ram Singh vs. Emperor, AIR (1939) FC 43, wherein the Court has observed as under:

F "But Sec.477-A in express terms covers the case of an officer, who willfully falsifies accounts which may be his duty to maintain. They have apparently put theft, embezzlement, or breach of trust on exactly the same footing as falsification of accounts, and have not considered the G charge of falsifying the accounts separately from that of criminal breach of trust. This is ignoring the significance of the words "purporting to be done" which are no less important. They have thought that an act done or purporting to be done in the execution of his duty as a servant of the Crown cannot by any stretching of the English language be

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made to apply to an act which is clearly a dereliction of his duty as such.

But if an act has purported to be done in execution of duty, it may be done so, only ostensibly and not really, and if done dishonestly may still be a dereliction of duty. The High Court Bench have taken the view that the Section is clearly meant to apply to an act by a public servant which could be done in good faith, but which possibly might also be done in bad faith.....The Section cannot be meant to apply to cases where there could be no doubt that the act alleged must be in bad faith.

So far as sub-s. (1) is concerned, the question of good faith or bad faith cannot strictly arise, for the words used are not only "any act done in the execution of his duty" but also "any act purporting to be done in the execution of his duty." When an act is not done in the execution of his duty, but purports to have been done in the execution of his duty, it may very well be done in bad faith; and even an act which cannot at all be done in execution of duty if another is made to believe wrongly that it was being done in execution of duty. It is therefore not possible to restrict the applicability of the Section to only such cases where an act could possibly have been done both in good and bad faith. Of course, the question of good or bad faith cannot be gone into at the early stage at which objection may be taken. Making false entries in a register may well be an act purported to be done in execution of duty, which would be an offence, although it can never be done in good faith. It is sub-sec. (2) only which introduces the element of good faith, which relieves the Court of its obligation to dismiss the proceedings. But that sub-section relates to cases even previously instituted and in which there may not be a defect of want of consent, and is therefore quite distinct and separate, and not merely ancillary to sub-s.(1), as the learned Sessions Judge supposed. Having regard to the ordinary and natural meaning of the words "purporting to be done," it is difficult to say that it necessarily implies "purporting to be done in good faith," for a person who ostensibly acts in

A execution of his duty still purports so to act, although he may have a dishonest intention."

(emphasis is ours)

B Reliance was also placed on Sankaran Moitra vs. Sadhna Das, (2006) 4 SCC 584, wherefrom our attention was drawn to the following paragraph:

"25. The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is C whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity D and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to E dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with F of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are G therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of

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learned counsel for the complainant that this is an eminently fit case for grant of such sanction." A

(emphasis is ours)

In order to substantiate the proposition being canvassed, the learned senior counsel, also invited our attention to R. Balakrishna Pillai vs. State of Kerala, (1996) 1 SCC 478, wherein this Court has held as under: B

"6. The next question is whether the offence alleged against the appellant can be said to have been committed by him while acting or purporting to act in the discharge of his official duty. It was contended by the learned counsel for the State that the charge of conspiracy would not attract Section 197 of the Code for the simple reason that it is no part of the duty of a Minister while discharging his official duties to enter into a criminal conspiracy. In support of his contention, he placed strong reliance on the decision of this Court in Harihar Prasad vs. State of Bihar, (1972) 3 SCC 89. He drew our attention to the observations in paragraph 74 of the judgment where the Court, while considering the question whether the acts complained of were directly concerned with the official duties of the public servants concerned, observed that it was no duty of a public servant to enter into a criminal conspiracy and hence want of sanction under Section 197 of the Code was no bar to the prosecution. The question whether the acts complained of had a direct nexus or relation with the discharge of official duties by the public servant concerned would depend on the facts of each case. There can be no general proposition that whenever there is a charge of criminal conspiracy levelled against a public servant in or out of office the bar of Section 197(1) of the Code would have no application. Such a view would render Section 197(1) of the Code specious. Therefore, the question would have to be examined in the facts of each case. The observations were made by the Court in the special facts of that case which clearly indicated that the criminal conspiracy entered into by the three delinquent public servants had no relation C D E F G H

whatsoever with their official duties and, therefore, the bar of Section 197(1) was not attracted. It must also be remembered that the said decision was rendered keeping in view Section 197(1), as it then stood, but we do not base our decision on that distinction. Our attention was next invited to a three-Judge decision in B. Saha vs. M.S. Kochar, (1979) 4 SCC 177. The relevant observations relied upon are to be found in paragraph 17 of the judgment. It is pointed out that 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 Section 197(1) of the code, are capable of both a narrow and a wide interpretation but their Lordships pointed out that if they were 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". At the same time, if they were too widely construed, they 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 is purported to be performed. The right approach, it was pointed out, was to see that the meaning of this expression lies between these 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. Only an act constituting an offence directly or reasonably connected with his official duty will require sanction for prosecution. To put it briefly, it is the quality of the act that is important, and if it falls within the scope of the aforequoted words, the protection of Section 197 will have to be extended to the public servant concerned. This decision, therefore, points out what approach the Court should adopt while construing Section 197(1) of the Code and its application to the facts of the case on hand.

7. In the present case, the appellant is charged with having entered into a criminal conspiracy with the co-accused while functioning as a Minister. The criminal conspiracy alleged is that he sold electricity to an industry in the State of

Karnataka "without the consent of the Government of Kerala which is an illegal act" under the provisions of the Electricity (Supply) Act, 1948 and the Kerala Electricity Board Rules framed thereunder. The allegation is that he in pursuance of the said alleged conspiracy abused his official position and illegally sold certain units to the private industry in Bangalore (Karnataka) which profited the private industry to the tune of Rs.19,58,630.40 or more and it is, therefore, obvious that the criminal conspiracy alleged against the appellant is that while functioning as the Minister for Electricity he without the consent of the Government of Kerala supplied certain units of electricity to a private industry in Karnataka. Obviously, he did this in the discharge of his duties as a Minister. The allegation is that it was an illegal act inasmuch as the consent of the Government of Kerala was not obtained before this arrangement was entered into and the supply was effected. For that reason, it is said that he had committed an illegality and hence he was liable to be punished for criminal conspiracy under Section 120-B, I.P.C. It is, therefore, clear from the charge that the act alleged is directly and reasonably connected with his official duty as a Minister and would, therefore, attract the protection of Section 197(1) of the Act."

(emphasis is ours)

Reliance was finally placed on P.K. Pradhan vs. State of Sikkim, (2001) 6 SCC 704, and our attention was drawn, to the following observations recorded therein:

"5. The legislative mandate engrafted in sub section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is

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

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15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence

establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

(emphasis is ours)

All in all, based on the judgments referred to above, it was contended, that even if it was assumed that Neeraj Kumar had been detained with effect from 24.06.1999, his detention by the appellants was "while acting or purporting to act" in the discharge of the appellants' official duties. And as such, the Chief Judicial Magistrate, Kapurthala, could not have taken cognizance, without sanction under Section 197 of the 'Code'.

11. Mr. Varinder S. Rana, learned counsel, who entered appearance on behalf of respondent no. 2, seriously contested the submissions advanced on behalf of the appellants. Learned counsel representing respondent no. 2, placed reliance on the following observations recorded by the High Court, in the impugned order :

"As far as question of sanction for prosecution of petitioners is concerned, the contentions raised by learned counsel for the petitioners could possibly be applicable for the detention period since 28.06.1999 when Neeraj Kumar was shown to have been arrested in FIR No.30 dated 03.03.1999. However, the petitioners are not entitled to protection of

A Section 197 of the Code for illegal detention and torture of Neeraj Kumar since 24.06.1999 till 28.06.1999 when his arrest was shown in FIR No.30 dated 03.03.1999. The said period of illegal detention and torture has no nexus much less reasonable nexus with the discharge or purported
B discharge of the official duty of the petitioners. Consequently, the impugned order cannot be said to be illegal because sanction for prosecution of the petitioners is not required for illegal detention and torture of Neeraj Kumar during the aforesaid period."

(emphasis is ours)

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In order to support the conclusions drawn by the High Court, learned counsel for respondent no. 2, also drew our attention to, Om Prakash vs. State of Jharkhand, (2012) 12 SCC 72, wherein this Court held as under :

D "32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant
E Singh v. State of Punjab, AIR 1960 SC 266). The protection given under Section 197 of the Code 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
F 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 (State of Orissa vs. Ganesh Chandra Jew, (2004) 8 SCC 40). If the above tests are
G applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection

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granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood." A

(emphasis is ours)

Reliance was then placed on Usharani vs. The Commissioner of Police, (2015) 2 KarLJ 511 (a judgment rendered by the Karnataka High Court), to highlight the importance and significance of personal liberty, specially with reference to unlawful detention wherein it has been observed as under: B

"10. In Constitutional and Administrative Law by Hood Phillips and Jackson, it is stated thus: C

"The legality of any form of detention may be challenged at common law by an application for the writ of habeas corpus. Habeas corpus was a prerogative writ, that is, one issued by the King against his officers to compel them to exercise their functions properly. The practical importance D of habeas corpus as providing a speedy judicial remedy for the determination of an applicant's claim for freedom has been asserted frequently by judies and writers. Nonetheless, the effectiveness of the remedy depends in many instances on the width of the statutory power under which a public E authority may be acting and the willingness of the Courts to examine the legality of decision made in reliance on wideranging statutory provision. It has been suggested that the need for the "blunt remedy' of habeas corpus has diminished as judicial review has developed into an ever more flexible jurisdiction. Procedural reform of the writ may F be appropriate, but it is important not to lose sight of substantive differences between habeas corpus and remedies under judicial review. The latter are discretionary and the court may refuse relief on practical grounds; habeas corpus is a writ of right, granted ex debito justitiae." G

11. The ancient prerogative writ of habeas corpus takes its name from the two mandatory words "habeas" and "corpus". 'Habeas Corpus' literally means 'have his body'. The general purpose of these writs as their name indicates

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A was to obtain the production of the individual before a Court or a Judge. This is a prerogative process for securing the liberty of the subject by affording an effective relief of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. This is a writ of such a sovereign and transcendent authority that no privilege B of power or place can stand against it. It is a very powerful safeguard of the subject against arbitrary acts not only of private individuals but also of the Executive, the greatest safeguard for personal liberty, according to all constitutional jurists. The writ is a prerogative one obtainable by its own C procedure. In England, the jurisdiction to grant a writ existed in Common Law, but has been recognized and extended by statute. It is well established in England that the writ of habeas corpus is as of right and that the Court has no discretion to refuse it. "Unlike certiorari or mandamus, a writ of habeas corpus is as of right "to every man who is D unlawfully detained. In India, it is this prerogative writ which has been given a constitutional status under Articles 32 and 226 of the Constitution. Therefore, it is an extraordinary remedy available to a citizen of this Country, which he can enforce under Article 226 or under Article 32 of the E Constitution of India."

(emphasis is ours)

12. The first task, which a Court is obliged to embark upon, when confronted with a proposition of the nature in hand, is to ascertain as to whether the alleged offence, attributed to the accused, had been F committed by an accused "while acting or purporting to act in the discharge of his official duty". In the facts and circumstances of the present case, the alleged action constituting the allegations levelled against the appellants, is based on the arrest and detention of Neeraj Kumar from 24.06.1999 upto 28.06.1999 (before, he was admitted to have been G formally arrested on 28.06.1999).

13. Insofar as the power of arrest and detention by police officials/ officers is concerned, reference may be made to Section 36 of the 'Code' which postulates, that all police officers superior in rank to an officer in charge of a police station, are vested with an authority to exercise the

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same powers (throughout the local area, to which they are appointed), which can be exercised by the officer in charge of a police station. Section 49 of the 'Code' postulates, the manner in which a police officer is to act, while taking an individual in custody. Section 49 of the 'Code', cautions the person making the arrest to ensure, that the individual taken into custody, is not subjected to more restraint than is necessary, to prevent his escape. Section 50 of the 'Code' mandates, that every police officer arresting a person without a warrant (as is the position, alleged in the present case), is mandated to forthwith disclose to the person taken in custody, full particulars of the offence for which he is arrested, as also, the grounds for such arrest. Section 50A obliges the police officer making the arrest, to immediately inform friends/relatives of the arrested person (on obtaining particulars from the arrested person), regarding his detention. And an entry of the arrest, and the communication of the information of the arrest to the person nominated by the detenu, has to be recorded in a register maintained at the police station, for the said purpose. Section 50A of the 'Code' also mandates, that the Magistrate before whom such an arrested person is produced, would satisfy himself that the obligations to be discharged by the arresting officer, had been complied with.

14. Based on the aforesaid provisions of the 'Code', there cannot be any serious doubt about the fact, that Surinderjit Singh Mand and P.S. Parmar, were holding the rank of Deputy Superintendent of Police, at the relevant time (from 24.06.199 to 28.06.1999). Both the appellants were "...officers superior in rank to an officer in charge of a police station...". Both the appellants were therefore possessed with the authority to detain and arrest, Neeraj Kumar at the relevant time (from 24.06.1999 to 28.06.1999). The question for complying with the requirements in Sections 49, 50 and 50A does not arise for the period under reference (from 24.06.1999 to 28.06.1999), because Neeraj Kumar according to official police records, was arrested only on 28.06.1999. The position adopted by the appellants was, that Neeraj Kumar was not under detention for the period from 24.06.1999 to 28.06.1999.

15. Keeping the legal position emerging from the provisions of the 'Code' referred to in the foregoing paragraphs in mind, it was the contention of learned counsel for the respondents, that in order to require sanction under Section 197 of the 'Code', it needs to be further established,

A that the appellants had acted in the manner provided for under the provisions of the 'Code', during the period Neeraj Kumar was allegedly arrested (from 24.06.1999 to 28.06.1999), i.e., before his admitted formal arrest on 28.06.1999. And only if they had done so, the requirement of seeking sanction under Section 197 would arise, because in that situation, the offence allegedly committed would be taken to have been committed B "while acting or purporting to act in the discharge of their official duties". In the present case, the arrest and detention of Neeraj Kumar from 24.06.1999 to 28.06.1999, is denied. The formalities postulated under the 'Code', on the alleged arrest of Neeraj Kumar on 24.06.1999, were admittedly not complied with, as according to the appellants, Neeraj C Kumar was not arrested on that date. It was therefore submitted, that any arrest or detention prior to 28.06.1999, if true, was obviously without following the mandatory conditions of arrest and detention, contemplated under the provisions (referred to above). And therefore, would not fall within the realm of "acting or purporting to act in the discharge of their official duties". D

16. In order to support the submissions recorded in the foregoing paragraphs, learned counsel for the respondents placed reliance on P.P. Unnikrishnan vs. Puttiyottil Alikutty, (2000) 8 SCC 131, and invited our attention to the following observations recorded therein:

E "21. If a police officer dealing with law and order duty uses force against unruly persons, either in his own defence or in defence of others and exceeds such right it may amount to an offence. But such offence might fall within the amplitude of Section 197 of the Code as well as Section 64(3) of the KP Act. But if a police officer assaults F a prisoner inside a lock-up he cannot claim such act to be connected with the discharge of his authority or exercise of his duty unless he establishes that he did such acts in his defence or in defence of others or any property. Similarly, if a police officer wrongfully confines a person in the G lock-up beyond a period of 24 hours without the sanction of a Magistrate or an order of a court it would be an offence for which he cannot claim any protection in the normal course, nor can he claim that such act was done in exercise of his official duty. A policeman keeping a person

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in the lock-up for more than 24 hours without authority is not merely abusing his duty but his act would be quite outside the contours of his duty or authority."

(emphasis is ours)

Based on the provisions of the 'Code', pertaining to arrest and detention of individuals at the hands of police personnel (referred to above), it was submitted, that the arrest of Neeraj Kumar from 28.06.1999 to 30.06.1999 would unquestionably fall within the purview of "acting or purporting to act in the discharge of his official duties" (of the concerned police officers/officials who arrested Neeraj Kumar). It was however asserted, that if the arrest of Neeraj Kumar from 24.06.1999 to 28.06.1999 (before he was formally detained on 28.06.1999) is found to be factually correct, such arrest of Neeraj Kumar cannot be accepted to have been made by the appellants – Surinderjit Singh Mand and P.S.Parmar, while acting or purporting to act in the discharge of their official duties. It was therefore submitted, that any alleged criminality, in connection with the detention of Neeraj Kumar from 24.06.1999 to 28.06.1999, would not require to be sanctioned under Section 197, before the concerned Court, took cognizance of the matter, against the concerned public servants.

17. Having given our thoughtful consideration to the contention advanced at the hands of learned counsel for the respondents, we are of the view, that the decision rendered by this Court in the P.P. Unnikrishnan case (supra) is clear and emphatic. The same does not leave any room for making any choice. It is apparent, that the official arrest of Neeraj Kumar in terms of the provisions of the 'Code', referred to hereinabove, would extend during the period from 28.06.1999 to 30.06.1999. The above period of apprehension can legitimately be considered as, having been made "while acting or purporting to act in the discharge of their official duties". The factual position expressed by the appellants is, that Neeraj Kumar was not detained for the period from 24.06.1999 to 28.06.1999. His detention during the above period, if true, in our considered view, would certainly not emerge from the action of the accused while acting or purporting to act in the discharge of their official duties. If it emerges from evidence adduced before the trial Court, that Neeraj Kumar was actually detained during the period from 24.06.1999 to 28.06.1999, the said detention cannot be taken to have been made by the accused while

A acting or purporting to act in the discharge of their official duties. More so, because it is not the case of the appellants, that they had kept Neeraj Kumar in jail during the period from 24.06.1999 to 28.06.1999. If they had not detained him during the above period, it is not open to anyone to assume the position, that the detention of Neeraj Kumar, during the above period, was while acting or purporting to act in the discharge of their official duties. Therefore, in the peculiar facts and circumstances of this case, based on the legal position declared by this Court in the P.P. Unnikrishnan case (supra), we are of the considered view, that sanction for prosecution of the accused in relation to the detention of Neeraj Kumar for the period from 24.06.1999 to 28.06.1999, would not be C required, before a Court of competent jurisdiction, takes cognizance with reference to the alleged arrest of Neeraj Kumar. We therefore hereby, endorse the conclusions drawn by the High Court, to the above effect.

18. It was also the contention of learned counsel for the appellants, that the protection afforded to public servants under Section 197 of the D 'Code', postulating sanction prior to prosecution, on account of the acts committed while discharging their official duties, is to shield public servants from frivolous harassment of prosecution, at the hands of private individuals. It was therefore, the submission of learned counsel for the respondents, that the scope and purview of Section 197 of the 'Code', should be limited to the initiation of criminal proceedings under Chapter- E XIV of the 'Code', wherein such initiation is postulated under Section 190 (upon receipt of a complaint, wherein facts disclose the commission of an offence, or upon a police report of such facts, or upon information received from any person other than a police officer, that such offence had been committed). In all the above situations, it is open to a Magistrate F to take cognizance of such offence subject to the condition, that the same falls within the jurisdictional competence of the said Magistrate. The Magistrate would however proceed against a public servant, after sanction has been granted by the concerned Government. And in case, the same does not fall within the competence of a Magistrate, to commit it to a Court of Session, which can take cognizance of the same, as G provided for by Section 193 of the 'Code'. Whereupon, the Court to which the matter is committed may proceed against a public servant, after sanction has been granted by the concerned Government under Section 197 of the 'Code'. In emphasizing on the above scope of sanction, it was pointed out, that Section 197 of the 'Code' being a part of Chapter-

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XIV of the 'Code', its applicability would extend to the provisions under Chapter-XIV alone. It was submitted, that Section 319 of the 'Code' is contained in Chapter XXIV, over which Section 197 can have no bearing. A

19. In continuation of the submissions noticed in the foregoing paragraphs, it was asserted by learned counsel representing the respondents, that the prosecution contemplated under Section 197 of the 'Code', and the action of the Court in taking cognizance, pertain to actions initiated on the basis of complaints, which disclose the commission of an offence, or on a police report of such facts, or upon receipt of information from a person other than the police officer, that such offence had been committed. It was asserted, that the above action of taking cognizance by a Court, is based on alleged "facts" and not "on evidence" recorded by a Court. The above distinction was drawn by referring to Section 190 of the 'Code' which contemplates initiation of action on the basis of facts alleged against an accused, as against, Section 319 of the 'Code' whereunder action is triggered against the concerned person only if it appears from the evidence recorded during the trial, that the said person was involved in the commission of an offence. While making a reference to Section 319 of the 'Code', it was submitted on behalf of the respondents, that cognizance taken under Section 319 of the 'Code', was by the Court itself, and therefore, the same having been based on "evidence", as also, the satisfaction of the Court itself, that such person needed to be tried together with the "other accused", it seemed unreasonable, that sanction postulated under Section 197 of the 'Code' should still be required. It was pointed out, that the protection contemplated under Section 197 of the 'Code', was not a prerequisite necessity, when cognizance was based on the evaluation of "evidence" by a Court itself. Learned counsel emphasized, that when a Court itself had determined, that cognizance was required to be taken, based on evidence which had been recorded by the same Court, it would be undermining the authority of the concerned Court, if its judicial determination, was considered subservient to the decision taken by the authorities contemplated under Section 197 of the 'Code'. Based on the submissions noticed above, it was the vehement contention of learned counsel for the respondents, that the mandate of Section 197 would not extend to cases where cognizance had been taken under Section 319 of the 'Code'. B C D E F G

20. While dealing with the first contention, we have already H

recorded our conclusions, which are sufficient to dispose of the matter under consideration. But, an important legal proposition has been canvassed, as the second submission, on behalf of the respondents (which we have recorded in the foregoing paragraph). Since it squarely arises in the facts and circumstances of this case, we consider it our bounden duty, to render our determination thereon, as well. In the succeeding paragraphs, we will deal with the second contention.

21. Insofar as the second contention advanced at the hands of learned counsel for the respondents is concerned, we are of the view that there is sufficient existing precedent, to draw a conclusion in respect of the proposition canvassed. Reference in the first instance may be made to Dilawar Singh vs. Parvinder Singh alias Iqbal Singh, (2005) 12 SCC 709. The following observations in the above cited judgment are of relevance to the present issue:

> "2. It is necessary to mention the basic facts giving rise to the present appeals. On the complaint made by the wife, a case was registered against Parvinder Singh @ Iqbal Singh under Section 406/498-A IPC. On 27.1.2000 Parvinder Singh @ Iqbal Singh gave a complaint to the SSP, Barnala alleging that on 23.1.2000, Jasbir Singh, ASI and a Home Guard came to his house on a scooter and forcibly took him to the Police Station Barnala. He was beaten and tortured and was subjected to third-degree methods. Some of his relatives, namely, Jarnail Singh, Sukhdev Singh, Sadhu Singh Grewal and Sukhdev Singh Virk came to the police station and requested the police personnel not to beat or torture him. It was further alleged in the complaint that Jasbir Singh, ASI, told them that they should talk to Dilawar Singh, S.H.O., who was sitting there on a chair. Dilawar Singh then demanded an amount of Rs.20,000/- for releasing Parvinder Singh. His relations then brought the amount, out of which Rs.15,000/- was offered to Dilawar Singh but he said that the money may be handed over to ASI Jasbir Singh. The amount of Rs.15,000/- was then given to ASI Jasbir Singh, who kept the same in the pocket of his coat. Parvinder Singh was medically examined on 28.1.2000 and a case was registered under Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act").

After investigation, charge-sheet was submitted only against ASI Jasbir Singh. A closure report was submitted against Dilawar Singh, S.H.O. as in the opinion of the investigating officer he had not committed any offence. It may be mentioned here that for prosecution of ASI Jasbir Singh, necessary sanction had been obtained from the competent authority under Section 19 of the Act. After the statement of the complainant Parvinder Singh had been recorded, he moved an application under Section 319 Cr.P.C. for summoning Dilawar Singh, S.H.O. as a co-accused in the case. After hearing the counsel for the parties, the learned Special Judge dismissed the application by the order dated 7.1.2002. Parvinder Singh filed a revision petition against the aforesaid order which has been allowed by the High Court by the impugned order dated 3.7.2002 and a direction has been issued to summon Dilawar Singh and try him in accordance with law.

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4. In our opinion, the contention raised by the learned counsel for the appellant is well founded. Sub-section (1) of Section 19 of the Act, which is relevant for the controversy in dispute, reads as under :

"19. Previous sanction necessary for prosecution.- (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority

A competent to remove him from his office."

This section creates a complete bar on the power of the Court to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of
B the competent authority enumerated in clauses (a) to (c) of this sub-section. If the sub-section is read as a whole, it will clearly show that the sanction for prosecution has to be granted with respect to a specific accused and only after sanction has been granted that the Court gets the
C competence to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by such public servant. It is not possible to read the section in the manner suggested by the learned counsel for the respondent that if sanction for prosecution has been granted qua one accused, any other public servant for whose
D prosecution no sanction has been granted, can also be summoned to face prosecution.

5. In State v. Raj Kumar Jain, (1998) 6 SCC 551, the Court was examining the scope of Section 6(1) of the Prevention of Corruption Act, 1947, which is almost similar to sub-
E section (1) of Section 19 of the Act. After quoting the provisions of Section 6(1) of the Prevention of Corruption Act, 1947, it was held as under in para 5 of the Report: (SCC pp. 552-53)

> "5. From a plain reading of the above section it is
F evidently clear that a Court cannot take cognizance of the offences mentioned therein without sanction of the appropriate authority. In enacting the above section, the legislature thought of providing a reasonable protection to public servants in the discharge of their official functions so that they may
G perform their duties and obligations undeterred by vexatious and unnecessary prosecutions."

6. In Jaswant Singh v. State of Punjab, AIR 1958 SC 124, sanction had been granted for prosecution of the accused for an offence under Section 5(1)(d) of the Prevention of
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Corruption Act, 1947, but no sanction had been granted for his prosecution under Section 5(1)(a) of the said Act. It was held that no cognizance could be taken for prosecution of the accused under Section 5(1)(a) of the Prevention of Corruption Act, 1947, as no sanction had been granted with regard to the said offence, but the accused could be tried under Section 5(1)(d) of the said Act as there was a valid sanction for prosecution under the aforesaid provision.

7. In State of Goa v. Babu Thomas, (2005) 8 SCC 130, decided by this Bench on 29.9.2005, it was held that in the absence of a valid sanction on the date when the Special Judge took cognizance of the offence, the taking of the cognizance was without jurisdiction and wholly invalid. This being the settled position of law, the impugned order of the High Court directing summoning of the appellant and proceeding against him along with Jasbir Singh, ASI is clearly erroneous in law.

(emphasis is ours)

The above issue was also examined by this Court in Paul Varghese vs. State of Kerala, (2007) 14 SCC 783, wherein this Court observed as under :

"2. Challenge in this appeal is to the order passed by a learned Single Judge of the Kerala High Court allowing the revision filed by the Respondent 2 in the present appeal who was the petitioner before the High Court. He had questioned correctness of the order passed by the Inquiry Commissioner and Special Judge, Trichoor, by which the prayer for his impleadment as the accused in terms of Section 319 of the Code of Criminal Procedure, 1973 (in short "the Code") was accepted. By the said order the Trial Court had held that Section 319 of the Code overrides the provisions of Section 19 of the Prevention of Corruption Act, 1988 (in short "the Act") and for exercise of power under the former provision, the only conditions required to be fulfilled are set out in sub-section (4) of Section 319

A itself. The High Court felt that the view was not sustainable in view of what has been stated by this Court in Dilawar Singh v. Parvinder Singh alias Iqbal Singh and Anr. (2005 (12) SCC 709). Accordingly, the order was set aside.

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B 4. As has been rightly held by the High Court in view of what has been stated in Dilawar Singh's case (supra), the Trial Court was not justified in holding that Section 319 of the Code has to get preference/primacy over Section 19 of the Act, and that matter stands concluded....."

C (emphasis is ours)

Last of all, reference may be made to a recent decision of this Court in Subramanian Swamy vs. Manmohan Singh, (2012) 3 SCC 64. For the issue under reference, the following observations recorded in D the above judgment are relevant:

"74. Keeping those principles in mind, as we must, if we look at Section 19 of the P.C. Act which bars a Court from taking cognizance of cases of corruption against a public servant under Sections 7, 10, 11, 13 and 15 of the Act, unless E the Central or the State Government, as the case may be, has accorded sanction, virtually imposes fetters on private citizens and also on prosecutors from approaching Court against corrupt public servants. These protections are not available to other citizens. Public servants are treated as a special class of persons enjoying the said protection so that F they can perform their duties without fear and favour and without threats of malicious prosecution. However, the said protection against malicious prosecution which was extended in public interest cannot become a shield to protect corrupt officials. These provisions being exceptions to the equality G 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

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governance as opposed to escalation of corruption. A

75. Therefore, in every case where an application is made to an appropriate authority for grant of prosecution in connection with an offence under the P.C. Act it is the bounden duty of such authority to apply its mind urgently to the situation and decide the issue without being influenced B by any extraneous consideration. In doing so, the authority must make a conscious effort to ensure the Rule of Law and cause of justice is advanced. In considering the question of granting or refusing such sanction, the authority is answerable to law and law alone. Therefore, the C requirement to take the decision with a reasonable dispatch is of the essence in such a situation. Delay in granting sanction proposal thwarts a very valid social purpose, namely, the purpose of a speedy trial with the requirement to bring the culprit to book. Therefore, in this case the right of the sanctioning authority, while either sanctioning or D refusing to grant sanction, is coupled with a duty."

(emphasis is ours)

22. The law declared by this Court emerging from the judgments referred to hereinabove, leaves no room for any doubt, that under Section 197 of the 'Code' and/or sanction mandated under a special statute (as E postulated under Section 19 of the Prevention of Corruption Act) would be a necessary pre-requisite, before a Court of competent jurisdiction, takes cognizance of an offence (whether under the Indian Penal Code, or under the concerned special statutory enactment). The procedure for obtaining sanction would be governed by the provisions of the 'Code' F and/or as mandated under the special enactment. The words engaged in Section 197 of the 'Code' are, "...no court shall take cognizance of such offence except with previous sanction...". Likewise sub-section (1) of Section 19 of the Prevention of Corruption Act provides, "No Court shall take cognizance.. except with the previous sanction...". The mandate is clear and unambiguous, that a Court "shall not" take cognizance G without sanction. The same needs no further elaboration. Therefore, a Court just cannot take cognizance, without sanction by the appropriate authority. Thus viewed, we find no merit in the second contention advanced at the hands of learned counsel for the respondents, that where

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A cognizance is taken under Section 319 of the 'Code', sanction either under Section 197 of the 'Code' (or under the concerned special enactment) is not a mandatory pre-requisite.

23. According to learned counsel representing respondent no. 2, the position concluded above, would give the impression, that the B determination rendered by a Court under Section 319 of the 'Code', is subservient to the decision of the competent authority under Section 197. No, not at all. The grant of sanction under Section 197, can be assailed by the accused by taking recourse to judicial review. Likewise, the order declining sanction, can similarly be assailed by the complainant or the prosecution.

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24. For the reasons recorded hereinabove, and in view of the conclusions recorded by us in paragraph 17, we are of the view that there is no merit in the instant appeal and the same deserves to be dismissed. Ordered accordingly.

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Kalpana K. Tripathy Appeal dismissed.