REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 159 OF 2016
(@ S.L.P.(Criminal) No. 3906 of 2012)

Punjab State Warehousing Corp. ... Appellant

Versus

Bhushan Chander & Anr. ... Respondents

J U D G M E N T

Dipak Misra, J.

The singular question that has emanated in this appeal, by special leave, is whether the High Court has correctly accepted the submission advanced on behalf of the first respondent, who was convicted for offences punishable under Section 409/467/468/471 of the Indian Penal Code, 1860 (for short, 'IPC') and had been awarded sentence for each of the offences with the stipulation that they would run concurrently, that he being an employee of the appellant

Corporation is a public servant and the trial had commenced without obtaining sanction under Section 197 of the Code of Criminal Procedure, 1973 (CrPC) and hence, the trial in entirety was invalid and as a result the conviction and sentence deserved to be set aside.

2. As far as the factual narration is concerned, suffice it to state that the Managing Director of the Corporation had written a letter on 28.6.1989 to the concerned police authority to register a case against the first respondent for offences punishable under Sections 409/467/468 and 471 of the IPC or any other appropriate provision of law. During investigation, the investigating agency found that the accused who was working as a Godown Assistant in the Corporation had misappropriated 11 gunny bales value of which was Rs.38,841/-; that he had tampered with the record of the department; and accordingly the police authorities filed the charge-sheet for the aforesaid offences before the court of competent Judicial Magistrate. The learned Magistrate on the basis of evidence brought on record, found that the prosecution had been able to bring home the guilt against the accused and accordingly

sentenced him to suffer rigorous imprisonment for three years under Section 467 and 409 IPC and two years under Section 468/471 IPC with separate default clauses. The judgment of conviction and order of sentence was assailed in appeal before the learned Session Judge, Firozpur and the matter was finally heard by the learned Additional Session Judge, who appreciating the evidence on record, concurred with the conviction but modified the sentence of three years imposed under Section 409 and 467 IPC to two years.

3. Being dissatisfied, the first respondent preferred Criminal Revision No. 359/2001 in the High Court of Punjab and Haryana at Chandigarh. Before the revisional court, the only contention that was raised pertained to non-obtaining of sanction under Section 197 CrPC. It was argued before the learned Single Judge that in view of the decisions in ***State of Maharashtra v. Dr. Budhikota Subbarao***[1], ***Rakesh Kumar Mishra v. State of Bihar and others***[2], ***Sankaran Moitra v. Sadhna Das and another***[3],

[1] (1993) 3 SCC 339
[2] (2006) 1 SCC (Cri) 432
[3] (2006) 2 SCC (Cri) 358

Om Kumar Dhankar v. State of Haryana[4], the requisite sanction having not been obtained, the trial was vitiated. On behalf of the Corporation as well as the State of Punjab, it was argued that the sanction under Section 197 CrPC was not necessary to prosecute the first respondent and to substantiate the said stand, reliance was placed on ***Dr. Lakshmansingh Himatsingh Vaghela v. Naresh Kumar Chadrrashanker Jah***[5], ***N. Bhargavan Pillai (dead) by Lrs. and another v. State of Kerala***[6], ***State of U.P. v. Paras Nath Singh***[7], ***Raghunath Anant Govilkar v. State of Maharashtra***[8] and ***Choudhury Parveen Sultana v. State of West Bengal***[9].

4. The learned Single Judge referred to the charges framed under Section 409 and 467 IPC. He also referred to the authorities in ***Prakash Singh Badal v. State of Punjab***[10], ***Nirmal Singh Kahlon v. State of Punjab***[11], ***Om Kumar Dhankar*** (supra) and ***Bakshish Singh Brar v.***

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[4] (2007) 3 RCR (Criminal) 496 :
[5] (1990) 4 SCC 169
[6] (2004) 2 Cri. CC 575
[7] (2009) 6 SCC 372
[8] (2008) 11 SCC 289
[9] (2009) 3 SCC 398
[10] (2007) 1 RCR (Criminal) 1
[11] (2008) 2 RCR (Criminal) 208

Gurmel Kaur[12] and analyzing Section 197 CrPC observed that the said provision is meant to protect responsible public servants against the institution of vexatious criminal proceedings for offences alleged to have been committed by them. The learned Single Judge referred to ***P. Arulswami v. State of Madras***[13], ***Matajog Dube v. H.C. Bahri***[14], ***P.K. Pradhan v. State of Sikkim***[15], reproduced a passage from ***B. Saha v. M.S. Kochar***[16], and came to hold as follows:-

> "So far as the commission of offence in this case is concerned, the very allegation would clearly reveal that it is not a case where the allegations are in any other capacity than a public servant. The allegation against the petitioner is that while being a public servant, he had committed a criminal breach of trust. It is only in the performance of the official duty that the petitioner is alleged to have been found with certain deficiencies for which allegation of criminal breach of trust as well has been made against him. Certainly the facts in this case are inextricably mingled with the official duty of the petitioner to be considered severable to call for dispensing with the requirement of sanction".

[12] 1988 (1) RCR (Criminal) 35
[13] AIR 1967 SC 776
[14] AIR 1956 SC 44
[15] 2001 (3) RCR (Cri.) 835 (SC)
[16] (1979) 4 SCC 177

5. After so stating, the revisional court distinguished the decision in ***Paras Nath Singh*** (supra) which was relied upon by the prosecution by stating thus:-

> "The aggrieved person in the said case has faced trial for alleged commission of the offences punishable under Section 409, 420, 461 and 468 IPC. The Supreme Court in this case has drawn difference between the official duty and doing something by public servant in the course of his service. It is observed that the section does not extend its protective cover to act or omission done by a public servant in service, but restricts its scope of operation to only those acts or omissions, which are done by a public servant in discharge of official duty. Even this observation of the Hon'ble Supreme Court would fully apply to the facts of the present case. Here, the petitioner is alleged to have committed this offence not only as a public servant but is stated to have done so in discharge of his official duty. In discharge of his official duty, the petitioner was required to protect stock, which he failed to do so and so he is asked to account for the same".

6. The eventual conclusion recorded by the learned Single Judge is to the following effect:-

> "Under normal circumstances, the offence under Sections 467/468/471 IPC may be of such a nature that requirement of obtaining sanction under Section 197 CrPC may not be called for. The offences in this case have been inter-connected with the main offence alleged against the petitioner under Section 409 IPC and it would clearly indicate that these offences could

> not be separately treated or dealt with. Requirement of obtaining sanction would be needed for an offence under Section 409 IPC and the same may not be separated from the remaining offences".

7. After so stating, the learned Single Judge ruled that the Corporation is a fully government-owned and financed by the State Government and, therefore, he is a public servant as per the definition of Section 21 of IPC and, therefore, his employment in the Corporation would confer him the status of public servant for which sanction is necessary. The revisional court has not adverted to any of the aspects touching merits of the case and, therefore, we refrain from entering into the said arena.

8. Section 197(1) and (2) CrPC which are relevant for the present purpose are reproduced below:-

> "**197. *Prosecution of Judges and public servants***.—(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013—

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

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

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 (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.

Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 166-A, Section 166-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 370, Section 375, Section 376, Section 376-A, Section 376-C, Section 376-D or Section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his

> official duty, except with the previous sanction of the Central Government."

9. In ***Matajog Dube*** (supra), certain complaints were alleged against the authorized officials on the ground that the officials had committed offences punishable under Sections 323, 341, 342 and 109 IPC. The officials were arrayed as accused persons who were authorized to search two premises in question. The trial Magistrate discharged the accused persons for want of sanction under Section 197 CrPC. Similar order was passed by another trial Magistrate. Both the orders were concurred with by the High Court. Be it noted two cases had arisen as two complaints were filed. It was contended before this Court that the act of criminal assault or wrongful confinement can never be regarded as act done while acting or purporting to act in the discharge of official duty and that duty is clearly defined in the statute. The Constitution Bench referred to two decisions of the Federal Court and the decisions of this Court in ***Shreekantiah Ramayya Munipalli v. State of Bombay***[17]

[17] AIR 1955 SC 287

and ***Amrik Singh v. State of Pepsu***[18] and analyzing the earlier authorities opined that:-

> "The result of foregoing discussion is this: There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty".

10. Thereafter, the Court adverted to the determination of need of sanction and the relevant stage. We are not concerned with the said aspects in the present case.

11. In ***Arulswami*** (supra), the President of a Panchayat Board was convicted under Section 409 IPC by the High Court which had overturned the decision of the lower court. It was argued before the High Court that the prosecution was not maintainable for want of sanction by the State Government under Section 106 of the Madras Village Panchayats Act (Madras Act X of 1950). The High Court held that no sanction of the Government was necessary as the appellant had ceased to hold the office of the President, when the prosecution was launched and further that the

[18] AIR 1955 SC 309

sanction of the Collector was sufficient in law. That apart, this Court posed the question whether the sanction of the Government under Section 106 of the Madras Act was necessary for the prosecution of the appellant for the offence under Section 409 IPC. To appreciate the contention raised, the Court referred to Section 197 CrPC. The three-Judge Bench referred to the decisions in ***Hori Ram Singh v. Emperor***[19] and ***H.H.B. Gill v. The King***[20]. The three-Judge Bench quoted the observations of Lord Simonds made in ***H.H.B. Gill*** (supra) in approving the statement of law made in ***Hori Ram Singh*** (supra). The Court also took note of the fact that the decision in ***H.H.B. Gill*** (supra) had been approved in ***Albert West Meads v. The King***[21], ***Phanindra Chandra v. The King***[22] and ***R. W. Mathams v. State of West Bengal***[23] and eventually held:-

> "It is not therefore every offence committed by a public servant that requires sanction for prosecution under S. 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so

[19] 1939 FCR 159 (AIR 1939 FC 43)
[20] 1948 FCR 19 : (AIR 1948 PC 128)
[21] AIR 1948 PC 156
[22] AIR 1949 PC 117
[23] AIR 1954 SC 455

> that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by S. 197 of the Criminal Procedure Code will be attracted. An office may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection".

12. The Court while arriving at the said conclusion also placed reliance on ***Om Prakash Gupta v. State of U.P.***[24] and ultimately came to hold that the sanction of the Government is not necessary for prosecution of the accused under Section 409 IPC.

13. The aforesaid two authorities make it clear that no sanction is needed to launch the prosecution for the offence punishable under Section 409 IPC. As we notice from the impugned judgment, the learned Single Judge has been swayed away by what has been stated in ***B. Saha*** (supra). In the said case, the appellants had sought discharge on the ground that cognizance of the complaint had been taken without obtaining sanction under Section 197 CrPC and Section 155 of the Customs Act, 1962. The Magistrate had accepted the objection relying on the decision in

[24] AIR 1957 SC 458

Shreekantiah Ramayya Munipalli (supra). The said order was challenged by the complainant before the High Court and the learned Single Judge, after elaborate discussion opined that no sanction was required for the prosecution of the accused-appellants for the offence under Sections 120-B/409 IPC because they were certainly not acting in the discharge of their official duties, when they misappropriated the goods. The three-Judge Bench analyzing the ambit and scope of Section 197 CrPC opined 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 in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If the said 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". The Court proceeded to observe that in the wider sense, the said 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 and the right approach to the import of these

words 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 of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. The Court referred to the observations of Ramaswami, J., in ***Baijnath v. State of M.P***.[25], which is to the following effect:-

> "it is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted".

After so stating, the Court held that the *sine qua non* for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.

14. The Court thereafter observed that whether an offence had been committed in the course of official duty or not,

[25] AIR 1966 SC 220

color of office cannot be answered hypothetically and would depend on the facts of each case. The Court referred to the decisions in ***Hori Ram Singh*** (supra) and the observations made in ***Gill's*** case for the purpose of appreciating what should be the broad test. The Court reproduced a passage from the Constitution Bench in ***Matajog Dube*** (supra) which states about reasonable connection between the act and the discharge of official duty, and that the act must bear such relation to the duty that the accused could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. We have ingeminated the same, though we had earlier reproduced the same.

15. After so stating, the Court adverted to the facts. The Court noticed that the fact complained of is dishonest misappropriation for conversion of the goods by the appellants which they had seized, and as such, were holding in trust to be dealt with in accordance with law. The Court opined there can be no dispute that the seizure of the goods by the appellants being entrusted with the goods or dominion over them was an act committed by them

while acting in the discharge of their official duty, but the act complained of subsequent dishonest misappropriation or conversion of those goods by the appellants, which is the second necessary element of the offence of criminal breach of trust under Section 409 IPC, and hence, it could not be said that the act was committed in the course of performance of their official duty. It was observed by the Court that there was nothing in the nature or quality of the act complained of which attaches to or partakes the official character of the appellants who allegedly did it nor could the alleged act of misappropriation or conversion reasonably said to be imbued with the color of the office held by the appellants. The Court referred to the test in ***Hori Ram Singh*** (supra) and thereafter stated thus:-

> "This, however, should not be understood as an invariable proposition of law. The question, as already explained, depends on the facts of each case. Cases are conceivable where on their special facts it can be said that the act of criminal misappropriation or conversion complained of is inseparably intertwined with the performance of the official duty of the accused and therefore, sanction under Section 197(1) of the Code of Criminal Procedure for prosecution of the accused for an offence under Section 409, Indian Penal Code was necessary".

16. The three-Judge Bench distinguished the decision in ***Shreekantiah Ramayya Munipalli*** (supra) and also ***Amrik Singh*** (supra). The ultimate conclusion of the Court reads thus:-

> "There are several decisions of this Court, such as, *Om Prakash Gupta* v. *State of U.P.*; *Baijnath* v. *State of M.P.* (supra) and *Harihar Prasad* v. *State* of Bihar[26], wherein it has been held that sanction under Section 197, Criminal Procedure Code for prosecution for an offence under Section 409, Indian Penal Code was not necessary. In Om Prakash Gupta case (supra) it was held that a public servant committing criminal breach of trust does not normally act in his capacity as a public servant. Since this rule is pot absolute, the question being dependent on the facts of each case, we do not think it necessary to burden this judgment with a survey of all those cases".

On the aforesaid analysis, the appeal was dismissed. We will advert to the appreciation of the ratio of the aforesaid decision by the learned Single Judge after we take note of certain other authorities.

17. In ***State of Maharashtra v. Dr. Budhilota Subbarao***[27], the Court referred to the authority in ***B. Saha*** (supra), ***Arulswami*** (supra) and stated that the concept of sanction has been widened by extending protection to even

[26] (1972) 3 SCC 89
[27] (1993) 3 SCC 339

those acts or omissions which are done in purported exercise of official duty and that is under the colour of office. Proceeding further, the Court stated that official duty implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as a part of duty which further must have been official in nature. As has been stated by the Court, the provision has to be construed strictly while determining its applicability to any act or omission in course of service and its operation has to be limited to those duties which are discharged in course of duty. It has been held that:-

> "But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary".

18. The facts in the said case are absolutely different but we have only referred to the said authority to appreciate

that it has reiterated the principle that an act must bear a relation to the duty that the accused could lay a reasonable claim that the act has been in exercise of official duty or duty that has been done has the colour of office.

19. In ***Shambhoo Nath Misra v. State of U.P.***[28], a private complaint was filed by the appellant therein against the second respondent for the offences punishable under Sections 409, 420, 465, 468, 477-A and 109 IPC. The learned Magistrate had dismissed the complaint holding that sanction under Section 197 CrPC was not obtained. The High Court accepted the view of the learned Magistrate. Be it stated, the learned Judge had relied upon the judgment of ***Hori Ram Singh*** (supra), ***B. Saha*** (supra) and ***Gill's*** case. The Court observed that the requirement of the sanction by competent authority or appropriate Government is an assurance and protection to the honest officer who does his official duty to further public interest. However, performance of official duty under colour of public authority cannot be camouflaged to commit crime. The Court further stated that to proceed further in the trial or the enquiry, as

[28] (1997) 5 SCC 326

the case may be, it has to apply its mind and record a finding that the crime and the official duty are not integrally connected.

20. Thereafter, the Court held:-

> "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".

Being of this view, the Court allowed the appeal and set aside the order of the Magistrate and directed restoration of the complaint.

21. In ***State of Kerala v. V. Padmanabhan Nair***[29] it has been held that when no sanction under Section 197 is necessary for taking cognizance in respect of the offences under Section 406 and Section 409 read with Section 120-B IPC. Similar principle has been laid down in ***State of H.P.***

[29] (1999) 5 SCC 690

v. M.P. Gupta[30]. In ***Parkash Singh Badal and another v. State of Punjab and others***[31] it has been ruled that the offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence. Similar principle has been reiterated in ***Choudhury Parveen Sultana v. State of West Bengal and another***[32] wherein the Court referred to the authority in ***Bhagwan Prasad Srivastava v. N.P. Mishra***[33] and ruled thus:-

> "12. It was also observed in Bhagwan Prasad Srivastava (supra) that Section 197 has been designed to facilitate effective and unhampered performance of their official duty by public servants by providing for scrutiny into the allegations of commission of offence by them by their superior authorities and prior sanction for their prosecution was a condition precedent to the taking of cognizance of the cases against them by the courts. It was finally observed that the question whether a particular act is done by a public servant in the discharge of his

[30] (2004) 2 SCC 349
[31] (2007) 1 SCC 1
[32] (2009) 3 SCC 398
[33] (1970) 2 SCC 56

> official duties is substantially one of the facts to be determined in the circumstances of each case."

22. A survey of the precedents makes it absolutely clear that there has to be reasonable connection between the omission or commission and the discharge of official duty or the act committed was under the colour of the office held by the official. If the acts omission or commission is totally alien to the discharge of the official duty, question of invoking Section 197 CrPC does not arise. We have already reproduced few passages from the impugned order from which it is discernible that to arrive at the said conclusion the learned Single Judge has placed reliance on the authority in ***B. Saha*'s** (supra). The conclusion is based on the assumption that the allegation is that while being a public servant, the alleged criminal breach of trust was committed while he was in public service. Perhaps the learned Judge has kept in his mind some kind of concept relating to dereliction of duty. The issue was basically entrustment and missing of the entrusted items. There is no dispute that the prosecution had to prove the case. But the public servant cannot put forth a plea that he was doing

the whole act as a public servant. Therefore, it is extremely difficult to appreciate the reasoning of the High Court. As is noticeable he has observed that under normal circumstances the offences under Sections 467, 468 and 471 IPC may be of such nature that obtaining of sanction under Section 197 CrPC is not necessary but when the said offences are interlinked with an offence under Section 409 IPC sanction under Section 197 for launching the prosecution for the offence under Section 409 is a condition precedent. The approach and the analysis are absolutely fallacious. We are afraid, though the High Court has referred to all the relevant decisions in the field, yet, it has erroneously applied the principle in an absolute fallacious manner. No official can put forth a claim that breach of trust is connected with his official duty. Be it noted the three-Judge Bench in ***B. Saha*** (supra) has distinguished in ***Shreekantiah Ramayya Munipalli*** (supra) keeping in view the facts of the case. It had also treated the ratio in ***Amrik Singh*** (supra) to be confined to its own peculiar facts. The test to be applied, as has been stated by Chandrasekhara Aiyar, J. in the Constitution Bench in ***Matajog Dube*** (supra)

which we have reproduced hereinbefore. The three-Judge Bench in ***B. Saha*** (supra) applied the test laid down in ***Gill's*** case wherein Lord Simonds has reiterated that the test may well be whether the public servant, if challenged, can reasonably claim, that what he does, he does in virtue of his office.

23. Tested on the touchstone of said principles, it cannot be said that in the obtaining factual matrix, sanction under Section 197 CrPC was necessary. We are compelled to observe that the High Court should have been more vigilant in understanding the ratio of the decisions of this Court.

24. Another line of argument was advanced on behalf of the appellant-Corporation that even if the respondents are treated as public servants, they being the employees of the Corporation, they do not get the protective shelter of Section 197 CrPC. In ***Lakshmansingh Himatsingh Vaghela*** (supra), a three-Judge Bench dissecting the anatomy of Section 197(1) CrPC opined that the said provision clearly intends to draw a line between public servants and to provide that only in the case of the higher ranks should the sanction of the government to their prosecution be

necessary. While a public servant holding an office of the kind mentioned in the section is as such public servant appointed to another office, his official acts in connection with the latter office will also relate to the former office. Thereafter, the Court ruled:-

> "The words "removable from office" occurring in Section 197 signify removal from the office he is holding. The authority mentioned in the section is the authority under which the officer is serving and competent to terminate his services. If the accused is under the service and pay of the local authority, the appointment to an office for exercising functions under a particular statute will not alter his status as an employee of the local authority".

25. In the said case, the appellant was admittedly a laboratory official in the service and pay of Municipal Corporation of Ahmedabad. His appointment as Public Analyst by the Government, as held by this Court, did not confer him the status of a public servant or an officer under service and pay of the Government. Being of this view, the Court opined he was not a public servant removable only by the State Government and accordingly allowed the appeal.

26. In ***Md. Hadi Raja v. State of Bihar***[34] the question arose whether Section 197 CrPC was applicable for

[34] AIR 1998 SC 1945

prosecuting officers of the public sector undertakings or the Government companies which can be treated as State within the meaning of Article 12 of the Constitution of India. The Court referred to Section 197 CrPC, noted the submissions and eventually held that the protection by way of sanction under Section 197 CrPC is not applicable to the officers of Government Companies or the public undertakings even when such public undertakings are 'State' within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the government.

27. The High Court has not accepted the submission of the Corporation in this regard. We are constrained to note that the decision in ***Md. Hadi Raja*** (supra) has been referred to in the grounds in this appeal. There is nothing on record to suggest that the said decision was cited before the High Court. It has come to our notice on many an occasion that the relevant precedents are not cited by the Corporations and the government undertakings before the High Court. We should, as advised at present, only say that a concerted effort should be made in that regard so that a stitch in time can save nine.

28. In view of the aforesaid analysis, the irresistible conclusion is that the respondents are not entitled to have the protective umbrella of Section 197 CrPC and, therefore, the High Court has erred in setting aside the conviction and sentence on the ground that the trial is vitiated in the absence of sanction. Consequently, we allow the appeal and set aside the judgment and order passed by the High Court and remit the matter to the High Court to decide the revision petition in accordance with law.

.....J.
[Dipak Misra]

.....J.
[Shiva Kirti Singh]

New Delhi,
June 29, 2016