
(2014) 01 RAJ CK 0231

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 2711 of 2011

M.L. Shankhla

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 01-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190, 197, 200, 202
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14-A
Penal Code, 1860 (IPC) — Section 120B, 120-B, 21, 389, 405
Prevention of Corruption Act, 1988 — Section 10, 11, 13, 15, 19

Citation : (2014) CriLJ 2458 : (2014) 2 RLW 1671

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Ravi Bhansali, Advocate for the Appellant; A.R. Nikub, PP, D.N. Yadav, Amit Sharma and Shambhu Singh, I.O, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Sandeep Mehta, J.—Heard learned counsel for the parties. The instant misc. petition has been filed on behalf of the petitioners who are/were employed/engaged as officers in the Rajasthan Rajya Vidhyut Prasaran Nigam Ltd. (for short referred to hereinafter as "the company") which is a Government of Rajasthan undertaking formed under the Indian Electricity Act and thus, are all public servants within the meaning of Section 21 of the I.P.C. By way of the instant petition, the petitioners seek are seeking quashing of the FIR No. 269/2011 registered against them at Police Station Basni, District Jodhpur for the offences under Sections 408, 42, 467, 468, 471, 389 and 120-B I.P.C.

2. Briefly stated the facts of the case are that the complainant/respondent No. 2 Shri Kishore Singh, a superannuated employee, was initially posted as a junior Accountant in the Company. Prior to his superannuation, the respondent No. 2 was entangled in litigation with the company in relation to the issues involving stoppage of his grade increments, regularization for a period of absence and

transfer etc. He filed a writ petition in this Court being S.B. Civil Writ Petition No. 2992/2003, inter alia, claiming salary and regularization for the unauthorized absence for a period of 16 months and also assailing his transfer order. The said writ petition was rejected by this Court the respondent No. 2 filed another writ petition before this Court being S.B. Civil Writ Petition No. 140/2007 wherein this Court by order dated 8.3.2007 permitted him to make a representation to the company raising all his issues. Accordingly, the respondent No. 2 submitted a representation to the Chairman and Managing Director of the Company. The representation moved by the respondent No. 2 came to be decided by the order dated 23.5.2007 which has been annexed to the instant misc. petition.

3. The Chairman and Managing Director of the company considered the entire gamut of the facts available on record and concluded that the transfer of the respondent No. 2 from Jodhpur to Sirohi was on administrative grounds and was not attended with any malafide whatsoever. It was also observed that the respondent No. 2 did not comply with the orders of the higher authorities. Some of the observations/findings recorded in the order dated 23.5.2007, which have a material bearing on this petition, are quoted herein below:-

(i) that said Shri Chauhan was transferred from the office of A.O. (TCC-IV), RVPN, Jodhpur to the office of the Superintending Engineer (TCC-VIII), RVPN, Sirohi vide order No. RVPN/CCOA/Estt-Cont/00-81/D.254 dated 24.5.2003 purely on administrative grounds. The order was issued by the competent transferring authority. It is incorrect to say that his said transfer from Jodhpur to Sirohi was with some malafides.

(ii) That said Shri Chauhan did not comply with the orders of the higher authorities, which were passed in reference to compliance of the decision of the Rajasthan High Court, Jodhpur and kept the fixation case in respect of Shri Sita Ram Dadhich Retired UDC pending for a period of more than three months without any cogent reason.

(iii) Regarding wrong fixation of pay in respect of Shri Sita Ram Dadhich, Retired UDC, as alleged by said Shri Chauhan, the same was got re-checked in the corporate office and fixation done was found to be correct as such allegation of Shri Chauhan was unfounded.

(iv) As aforesaid Shri Chauhan was transferred from Jodhpur to Sirohi vide order No. RVPN/CCOA/Estt-Cont/00-81/D.254 dated 24.5.2003 on administrative grounds, he was relieved vide order No. RVPN/AO/TCC.IV/Cont:/282 dated 4.6.2003 but he did not join at his new place of posting and remained absent from duty w.e.f. 5.6.2003 without any reason. There were no interim orders of the Hon'ble High Court Jodhpur in the writ petition (No. 2992/2003) filed by said Shri Chauhan. Therefore non-joining by him at Sirohi without there being any interim order in his favour by the Hon'ble High Court clearly tantamount to absence from duty and in normal course such conduct of the employee attracts initiation of disciplinary proceedings against him/her but taking a lenient view no

disciplinary action was initiated and on the contrary he was repeatedly given an opportunity to submit the appropriate leave application and get the same sanctioned in order to get the absence period regularised but he did not do so till date.

(v) Shri Kishore Singh was served upon a charge sheet on 7.6.03 under Regulation-6 of CCA Regulations, 1962 for delay in making of payment of pay fixation to Shri Sita Ram Dadhich and keeping the papers pending for three months. Another charge sheet under Regulation-6 of CCA Regulations, 1962 was also served upon him on 29.10.03 for disobeying the orders of AO (TCC-IV), Jodhpur. After taking a lenient view by the disciplinary authority he had been exonerated from the charges leveled against him in both the charge sheets.

(vi) The other issues raised by Shri Kishore Singh are counter allegations on other officer/officials. The same have been looked into and do not deserve any further consideration. So far as Shri Kishore Singh Chauhan is concerned, he has already been exonerated from the charges leveled against him.

(vii) As per existing provisions, the salary can be paid to an employee when he/she is on duty or on leave or under awaiting posting orders. Since Shri Kishore Singh was neither on duty nor on leave and nor under awaiting posting orders, salary for his absence period can not be paid to him, unless he applies for leave and gets the same sanctioned as per rules from the competent authority. Moreover the cardinal principle of "No work no wage" also applies.

The only issue left is the regularisation of the period of absence from 5.6.03 to 21.9.94 in respect of Shri Kishore Singh Chauhan. So far no charge sheet has been served on him for non compliance of transfer order dated 24.5.2003. In the interest of Justice I deem it appropriate and fit that if Shri Kishore Singh Chauhan, Jr. Accountant submits appropriate leave application within 15 days from the date of this order and gets the same sanctioned as per rules from the competent authority, no disciplinary action be initiated against him and service be regularised as per rules. However, if he does not submit his leave application for sanction within 15 days, the competent authority shall be free to take appropriate disciplinary action against him and his absence period (5.6.03 to 21.9.94) shall be treated as a break in service and consequential action (s) shall follow.

4. Thus, the respondent No. 2 was denied salary for his absence period. The said order though admittedly was received by the respondent No. 2, but was not challenged by him in any Court of law. Four years on from the date of the dismissal of his representation, the respondent No. 2 filed a complaint in the Court of learned Judicial Magistrate No. 4, Jodhpur against numerous officials of the company with the following allegations:-

1. All the accused had knowledge of the availability of Sita Ram's duplicate service books part I, II, III, promotion forgone request, transfer order of L.D.C. to Falna dated 15.5.1974, wrong sanction of selection grade dated 4.6.1992,

order of closure of departmental enquiry dated 3.4.2000, Sanction of 75% provisional pension order dated 15.2.1996 (285 days), dated 22.7.1997 (850 days and 28.6.1999 dated (835 days) regularization at absence from duty through ex-post sanction and sanction of increments in one stroke i.e., 30.6.95 to 30.3.99 vide order dated 29.6.99.

2. All the above accused in connivance with accused Teja Ram Choudhary hatched a criminal conspiracy and prepared a fourth duplicate service book, for revised pay fixation statement from dated 1.4.74 to 1.9.96, and submitted it to the Accounts Officer (T.C.C. IV) Jodhpur through letter No. 36 dated 22.4.2002 for regularization of the salary.

Accused N.K. Sharma approved all the revised pay fixation 1.4.1974, 1.4.1980, 1.4.1983, 1.9.1986, 1.9.1988 and 1.9.96 and sent it to the A.En. (PLCC) Jodhpur vide his letter No. 123 dated 30.4.2002.

Both the accused Teja Ram Choudhary and N.K. Sharma mentioned IIIrd selection grade disallowed/cancelled on page No. 12 and 14 of the above mentioned service book. The approval of the new pay fixation in service book IV order was passed behind the back of complainant. The complainant's request to provide the relevant document was turned down. The forged fourth duplicate service book of Sita Ram prepared by the accused is enclosed with the complaint. Revised pay fixation.

3. That the accused Teja Ram Choudhary prepared Sita Ram's Revised Pay fixation bill No. 7 dated 12.5.2002 and forwarded the same to the AO (TCC-IV), Jodhpur along with his letter dated 13.5.2002. After having it passed by the AO (TCC-IV) on 13.5.2002, the accused N.K. Sharma facilitated the payment of arrear amount of Rs. 2,80,855/- to Sita Ram as per the sanction letter dated 13.5.2002 for the period of 18.5.1975 to 30.6.1999, the payment was facilitated to Sita Ram by N.K. Sharma and Teja Ram Choudhary.

Whilst the payment was facilitated by these persons to Sita Ram, on the other hand, as per the absence statement and payment extract of Sita Ram, he was shown to be absent from duty and was not entitled for payment of any salary or arrear. He was also sanctioned the payment after fixation for the period of 18 years selection scale by the aforesaid bill, whereas Sita Ram never worked as L.D.C. for U.D.C. for the same. The absence period of Sita Ram was annexed with the complaint which proved that the accused prepared forged documents and facilitated illegal payment to Sita Ram.

4. That the accused S.S. Jain issued a third selection grade disallowed order dated 26.10.2002 despite which J.M. Mahecha issued order No. 322 dated 27.12.2002 granting an order of revised pay fixation from 1.9.1996 and forwarded the same to AO (TCC-IV) Jodhpur by letter No. 323 dated 27.12.2002.

5. That the complainant had provided a factual report regarding pay fixation in IIIrd selection which was previously disallowed but sanctioned again vide office

note No. 1, 7, 10, 13, 15 and 18 dated 14.1.2003 to 7.5.2003. The same is enclosed with the complaint.

6. That accused N.K. Sharma directed the complainant through a diary slip on 14.2.2003 to issue pay fixation order of Sita Ram. In order to implement the aforesaid order the complainant had requested the accused N.K. Sharma to make available the office note sheet of 30.4.2002. But the above named accused turned down the request saying it was not necessary. However, the photo copy of order of accused S.S. Jain dated 18.4.2002 and the note sheet para 15 to 19 dated 9.4.2002 and 10.4.2002 were made available to the complainant. In which the accused referred to the false information about the missing record of the orders and service books Part I, II and III pertaining to Sita Ram despite knowing the fact about the availability of books and service records by the accused Anand Joshi, S.S. Jain & Umesh Gupta and the new fourth duplicate service book prepared by accused Teja Ram Choudhary were only submitted without clubbing all four duplicate service books for passing retirement benefit order.

7. That the Secretary Administration, Jaipur issued explanation letter No. 198 dated 19.1.2002 to the accused N.K. Sharma. In response to which Sharma Ji submitted his explanation on 16.2.2002. Thereupon accused N.K. Sharma met accused Anand Sharma at Jaipur Head Office and issued a letter to institute disciplinary enquiry and issued transfer order of the complainant as the complainant recorded the note dated 24.2.2002 and 25.2.2002 para 10 & 11 requesting to seek guidance from Sr. A.O. (T & C) Jodhpur, whereas it is evident from para 11 and 12 of the note sheet that the accused Anand Joshi and N.K. Sharma sat over the matter while keeping service books for two months.

8. That the accused. N.K. Sharma and J.P. Mahecha hosted wine party in the Nigam Rest house Jodhpur for the accused Anand Joshi for Sita Ram's fixation case. The complainant was called at Nigam Rest house from the office and the complainant was asked to make wrong payment to Sita Ram and if it was not done accordingly the complainant was threatened to be suspended/terminated or transferred. It was revealed by the accused that there was pressure from the CMD and the CM. Gehlot to ensure false payments to Sita Ram. The complainant was abused and threatened to be murdered by Anand Joshi, who was heavily drunk, in the presence of a large number of officers and union officials. The complainant requested the accused referred to above pass such orders on the note sheet. Mr. Sharma however refused to pass a written order. In this way the accused Anand Joshi, N.K. Sharma and J.P. Mahecha pressurized the complainant to make irregular payments to Sita Ram.

9. That Anand Sharma asked the complainant to explain his absence from the office on a gazetted holiday. The letter asking for such explanation was written without a number and a date. The letter was written by Mr. Sharma in a drunken state in order to materialize the threat. The complainant received the letter on 8.5.2003 which was promptly replied to the same. The response is enclosed with

the complaint. On the receipt of the response from complainant, accused Anand Sharma issued a charge sheet on 29.10.2003 and the complainant gave a proper reply to the same. Thereafter accused Anand Sharma dropped the charges against the complainant vide order dated 10.2.2006. The aforesaid order is enclosed with appeal.

10. The Hon'ble High Court, Jodhpur while deciding the writ petition No. 152/2002 directed the accused to decide legal notice of Sita Ram dated 18.12.2001 within 3 months. The decision taken there upon was likely to be informed to the Hon'ble Registrar High Court and the complainant Sita Ram, while providing the copy of the decision taken thereon. But the accused did not issue a compliance report. The aforesaid order dated 19.1.2002 is enclosed with the complaint. On the contrary the accused through criminal conspiracy and by misleading C.M.D. prepared note sheet para 19 dt. 10.4.2002, inspite of the fact that the accused Anand Joshi and S.S. Jain were in know of the availability of service books and the relevant orders. Inspite of that, the fourth service book and prepared by the accused Teja Ram Choudhary by providing wrong information whereas, the CMD had asked for the reason of delay, in deciding the case as noted in para No. 16 of the note sheet. As such the accused plotted against the complainant.

11. That accused Teja Ram, N.K. Sharma and Smt. Prabha Agarwal managed to ensure the payment of Rs. 5,97,176/- as an arrear from 28.6.2002 to 10.9.2002 then the accused not Sita Ram to file contempt prayer No. 211/02 saying that disallowed III selection grade and interest on arrear amount will be duly paid.

12. That accused S.S. Jain issued sanction on 26.10.2002 for disallowed III selection without specific orders from CMD or Court. Thereon accused J.P. Mahecha issued pay fixation order on 27.12.2002 after two months and a case for fixation in 1996 was submitted on which the complainant made a clear noting on 14.1.2002 and 7.5.2003 (Annexure-7) that it was a clear case of over and irregular payment. The copy is enclosed with the complaint.

13. That accused Umesh Gupta called a meeting to prepare a reply to contempt case no. 211/02 against the CMD. In that meeting accused J.P. Mahecha, Umesh Gupta and Anand Joshi were present and passed an order of the transfer of the complainant as punishment and making him a scapegoat for the delay; all the accused ensured their safety through a criminal conspiracy. The complainant submitted his representation dated 16.5.2003 to CMD Secretary, accused Anand Joshi, Umesh Gupta at CMD Office and others were served through speed post. The aforesaid document enclosed with the complaint.

14. That the accused Anand Joshi issued transfer for the complainant vide order dated 24.5.2003 from Jodhpur to Sirohi inspite of the fact that there was a ban on transfers by the Rajasthan Government. The orders were sent to the accused Umesh Gupta for his approval. After the transfer order dated 13.6.2003 for Junior Accountants in which the accused mentioned "bears the approval of CMD"

without even taking the approval from the CMD. As such accused Anand Joshi and Umesh Gupta misusing their official capacity, issued punishment transfer orders whereas the CMD in his reply to the contempt notice against him No. 211/02 dated 27.5.2003 in which, no word was written against the complainant: (Annexure with the complaint) the Hon''ble Court vide its order dated 12.9.2003 set aside the contempt case No. 211/02 (order attached with the complaint).

15. That the complainant challenged the transfer order issued in ill-faith in Hon''ble High Court Jodhpur on receipt of court notice the accused issued a legal contempt charge sheet dated 7.6.2003 and set over it and then sent it on 4.7.2003 by registered post, which was received by the complainant on 5.7.2003. The aforesaid copies are enclosed with the complaint.

16. That in accordance with the order of the CMD, on 15.3.2004, F.A. & C.O.A., Jaipur, Shri R.K. Agarwal heard the complainant on this issue, Shri Agarwal submitted the report of hearing to the CMD and the accused Anand Joshi vide letter dated 8.4.2004 pressurized the complainant to withdraw his writ petition against the transfer order before the Hon''ble Court. The documents are enclosed with the complaint.

Accused issued the cancellation of transfer order leaving the complainant at Jodhpur on 8.4.2004 after five months on 20.9.2004. The complainant joined his duties in his original office on 22.9.2004. The accused however, did not inform the Hon''ble High Court of the proceeding of the personal hearing. The accused submitted a copy of the transfer order dated 20.9.2004 joining report to the Hon''ble Court on 8.11.2005 and the writ petition No. 2992/2003 was declared infructuous. The copy is enclosed with the complaint.

17. That on the report of personal hearing of the complainant on CMD''s orders, the Secretary (Admn.) Jaipur issued a legal contempt charge sheet No. 408, 409 and 405 dated 2.11.2004 against the accused S.E. (PLCC) Jaipur, J.P. Mahecha, N.K. Sharma, Whereas accused Anand Joshi issued a charge sheet pertaining to contempt of Court and on 24.5.2003 punishment transfer orders were issued.

It is clearly mentioned, in the CMD''s official letter No. 465 dated 2.11.2004 that in relation to the contempt case No. 152/2002 dated 14.1.2003 Courts order were not implemented in 3 months by the accused that the accused Teja Ram Choudhary on 24.4.2002 prepared fourth service book and issued fixation order in new pay scale for the period of 1.4.1974 to 30.6.99 which was approved by the accused N.K. Sharma, R.L. Mathur Accountant and S.L. Mathur Junior Accountant on 30.4.2002 that accused Teja Ram prepared fixation arrear bill dated 13.5.2002 and accused N.K. Sharma passed the bill for payment on 26.6.2002 and on 3.7.2002 accused Taja Ram made cash payment. The complainant contends that he had no involvement in 22.4.2002 fixation case and bill to be passed for payment in 3.7.2002 and disbursement of the payment and issuing of CPO, PPO, GPO etc. Inspite of this fact, the accused Anand Joshi in a drunken state asked the complainant for explanation, issued punishment transfer

order dated 24.5.2003 and forged legal contempt charge sheet on 7.3.2003. It is the gross misuse of official capacity of the accused Anand Sharma whereas CMD on 1.2.2006 acquitted all the accused and complainant of the charges.

18. That complainant sent legal notice to the accused on 24.7.2006 through Shri Kishore Kumar Vyas Advocate asking for the recovery of the excess payment made to Sita Ram, issuing of punishment transfer order against the complainant and issuing of the forged legal contempt charge sheet. The notice was also served to CMD Secretary, Jaipur on 8.6.2007 to institute disciplinary action against defaulter official in the above case.

The Assistant Secretary (Legal) sent a letter No. 657 dated 3.8.2006 to the accused Anand Joshi on 26.9.2006 to file para wise reply to the notice. On 26.9.2006 accused Anand Joshi sent his parawise reply and vide paras No. 2 to 9, 18, 19 & 21, accepted the charges of misusing official position and he fairly admitted that he was in drunken state of mind. He mentioned in reply to para 19 that its possible to grant 16 months full pay leave. No other accused filed a reply to the legal notice.

19. That the complainant requested the Subordinated Public Information Officer to provide copy of the order dated 24.5.2003, 7.6.2003, 8.4.2.004 and the copy of note sheet order dated 20.9.2004. The request was made through application dated 17.5.2007, RTI Officer who however declined to provide the information an appeal against the RTI Officer was submitted to the Controller of Finance Shri Deepak Shrivastava who was witness to the drunken behaviour of Anand Sharma on 6.5.2003. He also declined to provide information vide his letter dated 15.11.2007. It's appeal was submitted by the complainant to State Information Commission, Jaipur vide appeal No. 1513/2007 and the accused hired advocate to argue against providing the information but the State Information Officer ruled in complainant's favour and asked the authorities to provide the relevant information to the complainant within 21 days but the accused sought stay only from the Hon''ble High Court, Jaipur which was duly granted and the matter is under consideration of the Court, The accused using all means to escape from the responsibility of recovery from Sita Ram for the over payment received by him illegally. The copy of aforesaid orders/letters are enclosed with the complaint.

20. That accused M.L. Sankha wrongly recommended S.E. (TC-III) for granting of selection grade admissible after 18 years service on 4.6.92. Accordingly his pay was fixed at 1400/- from 1200/-. Accused M.L. Sankla was in knowledge of the non-suitability of the service condition of Sita Ram.

1: It is evident from the report of departmental enquiry officer Executive Engineer 220 KV. Jodhpur. The enquiry in respect of service during that period was under consideration. It was mentioned in the L.P.C. and the forwarding letter to the notice receipt signature of Mr. Sankla is enough proof.

2. How Mr. M.L. Sankla fixed the basic pay of Sita Ram from 150/- to 1400/- on 6.3.92.

3. It was fully known to Mr. Sankla that annual increment of Sita Ram was withheld from 1973 to 1992 and service from 1973 to 6.3.1992 was not certified.

4. Accused Sankla knew that Sita Ram had forgone his promotion and his transfer order dated 15.5.1974, L.D.C. to Falna. That he was not eligible for 18 years selection grade which was further certified by SE (City) vide letter No. 26.9.2000. The copy is enclosed with the complaint.

5. Accused Sankhla was in full knowledge about Accounts Officer (TCC-VII) Udaipur vide letter No. 3664 dated 4.3.1997 that the salary of Sita Ram was fraudulently fixed from 1200/- to 1400/-

6. The Accounts Officer (TCC-IV) and AEN (PLCC) Jodhpur vide letter dated 6.3.92 asked to effect recovery of Rs. 22792 as irregular increase in salary from 1200/- to 1400/-. Accused Sankla did not allow the recovery to take place. But Sita Ram retired on 4000/- basic pay. The state Government was put to loss. The copy is enclosed with the complaint.

21. That accused M.L. Sankla as an Executive Engineer forged the document to make Sita Ram eligible for 18 years-selection grade. Thus put the State Government at financial loss.

1. Accused Sankla granted 1969 days leave of absence for the period between January 1967 to March 1988 vide order dated 6.3.92 after allowing selection grade for the year 1996 (285 days) years 1997 (850 days) and two days before retirement 28.6.1999 for 835 day. The copy is enclosed with the complaint.

2. ZCE (T & B), Jaipur dropped the departmental enquiry vide letter no. 3.4.2000. The enquiry was dropped after retirement by forging documents and by criminal conspiracy.

3. The annual increment in one stroke for the period 30.9.85 to 30.9.99. It is against 6.3.1992.

22. That accused S.L. Jain asked accused S.K. Gaur to explain vide letter No. 118 dated 29.10.1999, why Sita Ram was not granted notional fixation as L.D.C. Accused S.K. Gaur prepared service book Part I, II, III and granted annual grade increment G.A. 1992 and granted provisional pension also Sita Ram was granted payment of unutilized leave of 164 days payment made thereof to and the grant of EOL was illegally recommended to SE (TCC-VIII) Sirohi. As such Sita Ram, M.L. Sankla, S.K. Gaur, Teja Ram Choudhary, J.P. Mahecha and S.S. Jain served between 12.8.88 to 30.6.99 in C.C. Circle and Sita Ram continued to work and get penalty for grant of leave service book, grant of increment without service book and the service record was forged in favour of Sita Ram knowingly concealed the information regarding transfer order in L.D.C. dated 15.5.1974 and the pay was fixed by false promotion and after retirement got illegal benefit worth lac of rupees in terms of gratuity commutation and the government suffered a loss of lac of rupees. Sita Ram is presently getting benefit of higher pension as he illegally got full benefit of forged pay fixation. Accused Umesh

Gupta being a legal officer worked against the Rules and against the court contempt No. 211/02 and complainant is still misusing his official position.

23. That accused Smt. Prabha Agarwal Chief Accounts Officer (P & F) Jaipur granted two types of pension as commutation and gratuity order and service book IV was not looked into correctly according to rule and accused knowingly did not sent Part I, II, III of service book to the pension officer, It was a part of a criminal conspiracy. The service book did not bear the thumb and finger impression and it did not have the counter signature of competent authority. It did not have leave account and granting of provisional pension list OPC 30.6.99 mentioned in the document submitted to pension officer. The book did not mention transfer order of SE (JDA) Jodhpur dated 29.6.2000 and 1.12.1973 to 17.5.1976 verification of payment of salary and service verification (Promotion and probationary period) were not mentioned. Inspite of it pay fixing at 425 on 16.5.1974 and 6.3.1992, 18 years promotion 27 years promotion accordingly irregular pay fixation results in loss of lac of rupees to the state exchequer. The accused mentioned above hatched a criminal conspiracy and by misusing their official capacity granted illegal benefits to Sita Ram resulting in the loss of lacs of rupees to the state exchequer. The accused spread the rumor that Hon"ble High court has ordered CMD to prepare fourth service book and ordered to make urgent payment on a higher scale. Incompliance of instructions contained in the writ petition No. 152/02 dated 14.1.2002 presented a compliance report to the Rajasthan High Court. By misusing official position the accused granted illegal benefits to Sita Ram. On the contrary honest auditors and well wishers of the corporation were reprimanded by issuing show cause notice and charge sheet, punishment transfer and as a punishment stopped 16 months pay to the petitioner. They were left in bankruptcy and sick by the accused through their illegal and misuse of official capacity.

24. The accused forged the documents and put the corporation to a great loss of lacs of rupees. This is a gross criminal act on the part of accused certainly it is not the part of a public servant's duty. Such accused who committed gross, crime deserve to be tried for criminal acts and arrested to inflict punishment to such officials under 197 Criminal Procedure Code does not invite government sanction.

25. The petitioner is submitting the copies of document available with him. The case needs to be investigated deeply by the High level investigating officer. All documents should be procured by taking the accused in the police remand so that their criminal acts come to light.

26. That the crime has been committed in the Basni police area hence it comes under your jurisdiction.

Thus, the complainant submits this complaint in the Court requesting that cognizance be taken of the complicated and serious issues and the matter be had deeply investigated by the superior officers of the police by forwarding the

complaint u/s 156(3) Criminal. Code of Procedure to Basni police station. A direction be issued to have the accused arrested forthwith. The forged record be directed to be recovered and all the accused be convicted and sentenced rigorously for the grave offences committed by them.

5. The complaint was submitted on 8.6.2011/The learned Magistrate directed the case to be put up before him with the report on 10.6.2011. On 10.6.2011, by a printed order appended by the use of a rubber seal, the learned Magistrate mechanically, on the request made by the counsel for the complainant, forwarded the complaint to the Police Station Bansī, Jodhpur for investigation. The wordings of the order dated 10.6.2011 in the form of a rubber seal are reproduced hereunder:-

6. FIR No. 269/2011 was registered at P.S. Basni and investigation commenced. The petitioners who are/were all employed/engaged with the company in one capacity or the other have approached this Court seeking quashing of the FIR by way of the instant misc. petition.

7. Mr. Amit Sharma, learned counsel for the respondent No. 2 raised a preliminary objection at the inception that Mr. Ravi Bhansali, the learned counsel for the petitioners, had no authority to file the instant misc. petition on their behalf. He urged that the petition had been filed without due authorisation by the company and as such, the learned counsel for the petitioners be restrained from arguing the case and the petition be rejected as being not maintainable. It was also urged that the company has not been made party to the instant miscellaneous petition and thus, also the petitioners were not entitled to pursue the instant miscellaneous petition seeking quashing of the FIR/complaint.

8. Mr. Ravi Bhansali, learned counsel for the petitioners submitted that he was representing, the petitioners upon having been authorised by them to file the instant petition before this Court. He has filed individual vakalatnamas on behalf of each of the petitioners before this Court subsequent to the filing of the instant petition. He submitted that the company was not a necessary party to the petition, as the FIR impugned was not registered at its instance. He thus submitted that the preliminary objections raised by the complainant's counsel are unsustainable.

9. The preliminary objections raised by the respondent No. 2 are absurd and misconceived the learned counsel for the respondent No. 2 has tried to avoid and side track the principal issue involved in the main petition by advancing a frivolous challenge regarding the competency of the learned counsel for the petitioners to file the instant miscellaneous petition. In the opinion of this Court, the objection raised regarding the learned counsel for the petitioner having no authority to file the miscellaneous petition is mala fide. The Rules of the Rajasthan High Court of Judicature provide that a criminal miscellaneous petition u/s 482 Cr. P.C. can be filed even on the basis of the instructions given by the client (memo of appearance). There is no compulsion to file vakalatnama on

behalf of the litigant in such cases. Rule 431 of the said Rules reads as under:-

Rule 431. Filing of a Vakalatnama or memorandum of appearance.-() No Advocate shall act for any person in any suit, appeal or proceeding of the civil nature unless he has filed a Vakalatnama authorising him to do so and signed by such person or by his recognised agent or by some other person duly authorised by or under a power-of-attorney to make such appointment.

(2) An Advocate, who has been engaged for the purpose of pleading only, may plead on behalf of any party after the he has filed in Court a memorandum of appearance signed by himself and stating-

(1) the names of the parties to the case;

(2) the name of the party for whom he appears; and

(3) the name of the person by whom he is authorised to appear.

(3) An Advocate who is engaged by another Advocate who has been duly appointed to act in Court on behalf of the party can only plead on behalf of the party without either filing a Vakalatnama or a memorandum of appearance.

10. The Rule clearly states that the compulsion of filing vakalatnama is only regarding the cases of civil nature. That apart, the learned counsel Mr. Ravi Bhansali has subsequently filed individual vakalatnamas on behalf of the petitioners and thus, this Court need not dwell much on the objection raised by the learned counsel for the respondent No. 2 regarding the authority available to the learned counsel for the petitioners to file and argue the miscellaneous petition. The objection is noted just to be rejected at the outset.

11. The second objection that the company has not been made a party in the miscellaneous petition, also need not hold this Court much. The FIR in question has not been registered at the instance of the company. Therefore, there was no requirement for impleading the company as a party to the instant misc. petition.

12. Thus, the preliminary objections raised by the learned counsel for the respondent No. 2 being devoid of any merit are hereby rejected.

13. Now advertent to the merits of the case; learned counsel for the petitioners urged that the petitioners are/were the officers and employees of the company at particular points of time in context to the varied allegations levelled in the complaint. He submitted that certain issues pertaining to the conditions of his service were raised by one Sita Ram, an erstwhile employee of the company, by filing a writ petition before this Court being S.B. Civil Writ Petition No. 152/2002. Sita Ram's service book was lost from the records of the company on which Sita Ram approached this Court by way of the aforesaid writ petition claiming various reliefs. The said writ petition was decided by this Court on 19.1.2002 with the following directions:-

The instant writ petition has been filed seeking various reliefs including the relief

for which the petitioner has already filed the representation/legal notice dated 18.12.2001.

As the order is to be passed by the respondents, the petition stands disposed of with the direction to the respondents 1 & 6 to decide the said representation/legal notice within a period of three months from the date of filing the certified copy of this order alongwith the fresh copy of the representation dated 9.10.2001 before the respondent Nos. 1 & 6.

14. Sita Ram was given liberty to file a representation to the company which he availed. The representation was decided by the Chairman & Managing Director of the company on 9.4.2002. It was directed that a new service book be prepared for Sita Ram on the basis of the record available in the company. It was also directed that the verification and fixation of Sita Ram and all pensionary benefits be released to him in ten days. Accordingly of the necessary pensionary benefits, fixation benefits etc. were released to Sita Ram way back in the year 2002.

15. The respondent No. 2 was also under litigation with the company One of the causes of the litigation was that the respondent No. 2 being the accountant in the company sat over the file of Sita Ram for a period of 3 months without any justification and caused undue delay in the disposal of the representation. For this deliberate dereliction of duty and for disobeying the order of the Accounts Officer (TCC), Jodhpur, a charge-sheet was served on the respondent No. 2. After enquiry, he was ultimately exonerated from the charges. However, he was transferred from Jodhpur to Sirohi vide order dated 24.5.2003. He did not join the new place of posting and remained absent from duty for a period of 16 months.

16. He filed a writ petition No. 2992/2003 before this Court and without there being a stay order in his favour, he refused from joining at Sirohi. A notice for initiating disciplinary proceedings was given to him, but ultimately, taking; a lenient view, no disciplinary action was initiated against him. Rather, he was given an opportunity to submit a leave application for getting the absence period regularised.

17. The respondent No. 2 upon being superannuated submitted various representations to the company and took the matter upto this Court in writ petition No. 140/2007. This Court permitted the complainant/respondent No. 2 to file a representation to the Chairman cum Managing Director of the company which was filed and was decided by the Chairman cum Managing Director on 23.5.2007 in the terms reproduced herein above.

18. Learned counsel for the petitioners thus submitted that it is obvious and apparent that all the objections of the respondent No. 2, which were raised in his representation and which form the substratum of the FIR impugned, were taken care of by the order dated 23.5.2007. The objections raised by the respondent No. 2 were overruled by the Chairman cum Managing Director, who had a thorough enquiry conducted and found no flaws or faults in the actions of the

concerned officers/employees of the company regarding the grant of service & retiral benefits to Sita Ram. The respondent No. 2 himself was found responsible of non-feasance by remaining absent from duty without leave. Despite that, the Chairman cum Managing Director took a lenient view and permitted the respondent No. 2 to submit an application for leave within a period of 15 days from the date of the order and in the event of the leave application being filed, the absence period was directed to be considered as regularised. Learned counsel for the petitioners further submitted that rather than filing the appropriate leave application, the respondent No. 2 slept over the matter for 4 years and has now malafidely entangled the officers of the company in the impugned FIR by making false and concocted allegations. He urged that ex-facie, the allegations levelled in the FIR impugned do not constitute any offence whatsoever and thus, the same deserves to be quashed.

19. Learned counsel for the petitioners further urged that as the petitioners are/were all the employees/officers employed/engaged in the affairs of the Government company in one capacity or the other, they cannot be prosecuted vicariously for the offences allegedly committed by them under the Indian Penal Code while discharging their official functions and duties in regards to the day to day affairs of the company. He urged that the law in this regard is well settled by the judgment rendered by the Hon"ble Supreme Court in the case of S.K. Alagh Vs. State of U.P. and Others, , wherein the Hon"ble Supreme Court has held that the principle of vicarious liability for the offences under the Indian Penal Code could not apply to the directors and employees of an incorporated company. He submitted that the FIR impugned is malicious and amounts to a gross abuse of the process of the Court and thus, the same be-quashed.

20. Per contra, learned counsel for the respondent No. 2 has vehemently opposed the submissions raised by the learned counsel for the petitioners. He submitted that the fact that four fake and fabricated service books of Sita Ram were prepared by the employees and officers of the company, is proved from investigation. He urged that the petitioners by their fraudulent acts, facilitated the grant of undue and wrongful monetary gain to Sita Ram by preparing duplicate service books which are also forged and thus, prima-facie offences of fraud and forgery are made out from the admitted, allegations as set out in the FIR. He thus contended that the petitioners have no legal ground available to them so as to have the FIR quashed. He, therefore, prayed that there is no justification available for exercising the inherent powers of this Court to quash the FIR impugned.

21. Heard and considered the arguments advanced by the learned counsel for the parties and perused the FIR impugned and the case diary.

22. The main allegations forming the spine of the FIR impugned are two fold. The first part of allegations is regarding preparation of fraudulent service record of Sita Ram and facilitating undue benefits and monetary gains to him. The Investigating Officer was put a specific query by this Court as to whether any

evidence has been collected by him showing prima-facie that, the service books of Sita Ram were prepared fraudulently to which" the Investigating Officer replied that the issue was forwarded to the C.A.G. for examination and that the C.A.G. replied to the query by a letter dated 22.11.2012 wherein it has been stated that the office of the Additional C.A.G. issued paragraphs and notings only on the detailed enquiry of the matter during audit enquiry of the department in question. It is not in dispute that no such paragraph/noting was issued by the C.A.G. during the audit of the department's accounts for the relevant period. The Investigating Officer has taken the duplicate service book of Sita Ram on record. It is the specific case, of the company as disclosed during investigation that the duplicate service book of Sita Ram had to be prepared because his original service record was lost.

23. The loss of service book is reported to have occurred more than 20 years ago and as such, no malafides can be attributed to any of the employees of the company in this regard. As a matter of fact, the delay occasioned in the process of preparing the duplicate service record, was attributed to none else than the respondent No. 2/complainant and he was subjected to departmental proceedings in this regard also. In the opinion of this Court, the issue raised by him in the FIR regarding the alleged fraudulent preparation of the service books of Sita Ram by the officers/employees of the company is apparently malafide and misconceived. The issue was thoroughly enquired into, under the directions of the Chairman cum Managing Director of the company. The Chairman cum Managing Director vide order dated 23.5.2007, on the representation of the respondent No. 2 has already laid the issues and queries to rest holding that the matter was thoroughly examined in the corporate office and the allegations levelled by the respondent No. 2/complainant were found to be unfounded.

24. The issue regarding wrongful transfer and denial of payment during the transfer period of the complainant is essentially a service dispute and as such, the Investigating Officer cannot have any say in the matter. It is only for the departmental superiors to decide the questions which have been made the subject/basis of the FIR impugned. That apart, the respondent No. 2 has already availed the plenary jurisdiction of this Court under Article 226 of the Constitution of India and failed in his endeavour.

25. Now coming to the legal submissions advanced by the learned counsel for the petitioners as regards the proposed prosecution of the employees/officers of an incorporated company concerning their vicarious liability for the offences under the Indian Penal Code.

26. The Hon''ble Supreme Court considered the issue regarding liability of the Directors of an incorporated company in a prosecution for vicarious liability regarding the offence of fraud etc. in the case of S.K. Alagh (supra). The Hon''ble Supreme Court held that the directors of an incorporated company could not be prosecuted under the provisions of the Indian Penal Code vicariously for the offences of fraud etc. and covered under the Indian Penal Code, committed

during the day to day affairs of the company. It was held by the Hon''ble Supreme Court as below:

17. Indian Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence.

18. A criminal breach of trust is an offence committed by a person to whom the property is entrusted.

19. Ingredients of the offence u/s 406 are:

(1) a person should have been entrusted with property, or entrusted with dominion over property;

(2) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so;

(3) that such misappropriation, conversion, direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

20. As, admittedly, drafts were drawn in the name of the company, even if appellant was its Managing Director, he cannot be said to have committed an offence u/s 406 of the Indian Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself. (See Sabitha Ramamurthy and Another Vs. R.B.S. Channabasavaradhya,).

21. We may, in this regard, notice that the provisions of the Essential Commodities Act, Negotiable Instruments Act, Employees' Provident Funds and Miscellaneous Provisions Act, 1952 etc. have created such vicarious liability. It is interesting to note that Section 14-A of the 1952 Act specifically creates an offence of criminal breach of trust in respect of the amount deducted from the employees by the company. In terms of the explanations appended to Section 405 of the Indian Penal Code, a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Whereas a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling u/s 406 of the Indian Penal Code vicarious liability has been held to be not extendable to the Directors or officers of the company. (See Maksud Saiyed Vs. State of Gujarat and Others,).

27. Thus, an irrefutable conclusion was drawn by the Hon''ble Supreme Court that in cases involving the offences of criminal breach of trust, the concept of vicarious liability cannot be extended to the directors or officers of the company.

28. Upon going through the case diary, this Court is satisfied that none of the

allegations levelled in the FIR regarding the accused petitioners having committed the offence of fraud, breach of trust or forgery, is substantiated from the material available on the record. The order Annex. 2 is a document of clinching nature, can be taken into account by this Court whilst considering the petition filed u/s 482 Cr. P.C. for quashing FIR in the light of the decision of the Hon''ble Supreme Court in the case of Rajiv Thapar and Others Vs. Madan Lal Kapoor, . It is apparent that none of the allegations of the complaint are prima-facie sustainable. The complainant waited for an unduly long period of 9 years before filing the FIR impugned and in order to vent his frustration on the officers employed in the company, Upon having failed to obtain for himself by use of pressure, regularisation for his authorised absence period of 16 months, the respondent No. 2 has tried to drag the official of the company in this frivolous prosecution which apparently is malicious and unsustainable in the eye of law.

29. Now in a recent decision rendered by the Hon''ble Supreme Court in the case of Anil Kumar and Others Vs. M.K. Aiyappa and Another, , the issue regarding the permissibility to forward a complaint with allegations of offences against the public servants in regards to the acts committed by them in the discharge of their official duty has been laid to rest beyond doubt. The Hon''ble Supreme Court held as below:-

5. The High Court, after hearing the parties, took the view that the Special Judge could not have taken notice of the private complaint unless the same was accompanied by a sanction order, irrespective of whether the Court was acting at a pre-cognizance stage or the post-cognizance stage, if the complaint pertains to a public servant who is alleged to have committed offences in discharge of his official duties. The High Court, therefore, quashed the order passed by the Special Judge, as well as the complaint filed against the Appellant. Aggrieved by the same, as already stated, the complainants have come up with these appeals.

6. We have heard the senior Counsel on either side, Shri Kailash Vasdev, learned senior Counsel appearing for the Appellants, submitted that if the interpretation of the High Court is accepted, then the provisions of Section 19(3) of the PC Act would be rendered otiose. Learned senior Counsel also submitted that, going through the above mentioned provision, the requirement of sanction u/s 19(1) is only procedural in nature and the same can be cured at a subsequent stage of the proceedings even after filing of the charge-sheet and hence the requirement of "previous sanction" is merely directory and not mandatory. Reliance was placed on the judgments of this Court in R.S. Nayak Vs. A.R. Antulay, and P.V. Narsimha Rao Vs. State (CBI/SPE), . Learned senior Counsel further submitted that the High Court also committed an error in holding that the sanction was necessary even while the Court was exercising its jurisdiction u/s 156(3) Code of Criminal Procedure. Learned senior Counsel submitted that the order directing investigation u/s 156(3) Code of Criminal Procedure would not amount to taking cognizance of the offence. Reference was made to the judgments of this Court in Tula Ram and Others Vs. Kishore Singh, and Srinivas Gundluri and Others Vs.

SEPCO Electric Power Construction Corporation and Others, .

7. Shri Uday U. Lalit, learned senior Counsel appearing for the Respondents, on the other hand, submitted that the question raised in this case is no more res integra. Reference was made to the judgment of this Court in Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and Another, . Learned senior Counsel submitted that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duties. The purpose of obtaining sanction is to see that the public servant be not unnecessarily harassed on a complaint, failing which it would not be possible for a public servant to discharge his duties without fear and favour. Learned, senior Counsel also placed reliance on the judgment of this Court in Maksud Saiyed Vs. State of Gujarat and Others, and submitted that the requirement of application of mind by the Magistrate before exercising jurisdiction u/s 156(3) Code of Criminal Procedure is of paramount importance. Learned senior Counsel submitted that the requirement of sanction is a prerequisite even for presenting a private complaint. u/s 200 Code of Criminal Procedure and the High Court has rightly quashed the proceedings and the complaint made against the Respondents.

8. We may first examine whether the Magistrate, while exercising his powers u/s 156(3) Code of Criminal Procedure, could act in a mechanical or casual manner and "go on with the complaint after getting the report. The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in Maksud Saiyed case (supra) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction u/s 156(3) and held that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Code of Criminal Procedure, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter u/s 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient: After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation u/s 156(3) Code of Criminal Procedure, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.

9. We will now examine whether the order directing investigation u/s 156(3) Code of Criminal Procedure would amount to taking cognizance of the offence, since a contention was raised that the expression "cognizance" appearing in Section 19(1) of the PC Act will have to be construed as post-cognizance stage, not pre-cognizance stage and, therefore, the requirement of sanction does not arise prior to taking cognizance of the offences punishable under the provisions

of the PC Act. The expression "cognizance" which appears in Section 197 Code of Criminal Procedure came up for consideration before a three-Judge Bench of this Court in State of U.P. Vs. Paras Nath Singh, , and this Court expressed the following view:

6. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances-in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, "no court shall take cognizance Of such offence except with the previous sanction. Use of the words "no" and "shall" makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Blacks Law Dictionary the word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes." In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice, of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

xxxxxxxxxx

xxxxxxxxxx

In State of West Bengal and another Vs. Mohammed Khalid and others, this Court has observed as follows:

It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a sub-sequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out.

10. The meaning of the said expression was also considered by this Court in Subramaniam Swamy case (supra). The judgments referred to herein above clearly indicate that the word "cognizance" has a wider connotation and not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation u/Sec. 156(3) Code of Criminal procedure, obviously, he has not taken cognizance of the offence and, therefore,

it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented u/s 200 Code of Criminal Procedure and the next step to be taken is to follow up u/s 202 Code of Criminal Procedure. Consequently, a Special Judge referring the case for investigation u/s 156(3) is at pre-cognizance stage.

11. A Special Judge is deemed to be a Magistrate u/s 5(4) of the PC Act and, therefore, clothed with all the magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two options. He may take cognizance of the offence u/s 190 Code of Criminal Procedure or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take, cognizance, without taking cognizance u/s 190, may direct an investigation u/s 156(3) Code of Criminal Procedure. The Magistrate, who is empowered u/s 190 to take cognizance, alone has the power to refer a private complaint for police investigation u/s 156(3) Code of Criminal Procedure.

12. We may now examine, whether, in the above mentioned legal situation, the requirement of sanction is a pre-condition for ordering investigation u/s 156(3) Code of Criminal Procedure, even at a pre-cognizance stage. Section 2(c) of the PC Act deals with the definition of the expression "public servant" and provides under Clauses (viii) and (xii) as under:

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty.

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in what-ever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

The relevant provision for sanction is given in Section 19(1) of the PC Act, which 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 the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

Section 19(3) of the PC Act also has some relevance; the operative portion of the same is ex-tracted hereunder:

Section 19(3) - Notwithstanding anything contained in the Cod of Criminal Procedure, 1973 (2 of 1974)-

(a) no finding, sentence or order passed by a special judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of, or any error, omission or irregularity in the sanction required under Sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;

(b) xxx xxx xxx

(c) xxx xxx xxx

13. Learned senior Counsel appearing for the Appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Sec. 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-sec. (3) of Sec. 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to herein above, the Magistrate cannot order investigation against a public servant while invoking powers u/Sec. 156(3) Code of Criminal Procedure. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh and Subramaniam Swamy cases (supra).

14. Further, this Court in Criminal Appeal No. 257 of 2011 in the case of General Officer, Commanding vs. CBI and opined as follows:

Thus, in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him... If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio.

15. We are of the view that the principles laid down by this Court in the above referred judgments squarely apply to the facts of the present case. We, therefore, find no error in the order passed by the High Court. The appeals lack merit and are accordingly dismissed.

30. Thus, in the aforesaid judgment, the Hon'ble Supreme Court has propounded a theory that in absence of a prior sanction, the learned Special Court who is having the powers of a Magistrate is not empowered to forward a private complaint to the police for investigation u/s 156(3) Cr. P.C. when the

complaint is directed against the public servants and where the allegations are in relation to the acts/offences committed by them during the course of discharge of their official duties.

31. In the case at hand, the learned Magistrate on receiving the complaint in a mechanical fashion by appending a rubber seal order, forwarded the same to the police for investigation without applying his mind to the aspect that no prior sanction was available to prosecute the public servants arrayed as accused in the complaint.

32. It is not in dispute in the present case also that all the allegations of the complainant are in relation to the acts committed by the accused, who are/were the public servants, in the discharge of their official duties while being engaged/employed in the affairs" of the electricity company, which is a Government of Rajasthan undertaking. The dictum which was laid down by the Hon"ble Supreme Court in the aforesaid judgment squarely applies to the case at hand because Section 197 Cr. P.C., which mandates that prior sanction is necessary to prosecute a public servant, is wider in ambit as compared to Section 19 of the Prevention of Corruption Act. Whilst the requirement of prior sanction ceases in the cases under the Prevention of Corruption Act, after the public servant has retired, the requirement of procuring sanction u/s 197 Cr. P.C. continues even thereafter, as has been held by the Hon"ble Supreme Court in the case of R. Bal Krishna Pillar vs. State of Kerala reported in AIR 1996 SC 901.

33. As a result of the aforesaid discussion, this Court has no hesitation in holding that a disgruntled retired employee of the company has entangled the officers of the company in a highly belated criminal prosecution in order to vent his frustration on having lost in departmental proceedings. In the opinion of this Court, the FIR impugned is malafide and amounts to a gross abuse of process of Court.

34. The upshot of the above discussion is that the instant misc. petition succeeds and the FIR No. 269/2011 registered against the petitioners at Police Station Basni, District Jodhpur for the offences under Sections 408, 420, 467, 468, 471, 389 and 120B IPC, and all subsequent proceedings/investigation pursuant thereto deserve to and are hereby quashed. Stay petition also stands disposed of.