
(2012) 07 GAU CK 0073
In the Gauhati High Court
Case No : Criminal Rev. No. 703 of 2004

Sayra Begum Laskar and Another (Musstt)	APPELLANT
Vs	
State of Assam and Another	RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 156(3), 197, 197(1)
Penal Code, 1860 (IPC) — Section 167, 197, 34, 407, 409

Citation : (2013) 1 GLD 324 : (2012) 4 GLT 605

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : P.K. Deka, for the Appellant; K.A. Mazumdar, Addl. PP, for the Respondent

Judgement

I.A. Ansari, J.—With the help of this application, made u/s 482 Cr.PC., the petitioners, who are accused in CR Case No. 223/2004, have sought for setting aside and quashing of not only the complaint, in question, which has given rise to the complaint case aforementioned, but also the order, dated 20.8.2004, passed by the learned Judicial Magistrate, First Class, Hailakandi, whereby summons have been directed to be issued to the petitioners as accused. I have heard Mr. P.K. Deka, learned counsel, for the accused petitioners, and Mr. K.A. Mazumdar, learned Addl. Public Prosecutor, Assam.

2. Before coming to the merit of this revision, it needs to be noted that the case of the complainant is, in brief, thus: The Central Government allotted money to various districts, including the district of Hailakandi, under a scheme known as SGRY and, in terms of the said scheme, accused No. 1, who is a member of the Anchalik Panchayat, and accused No. 2, who is a Junior Engineer, had the duty to utilize the amount, so sanctioned, during the financial year 2003-2004, upon getting the scheme approved by appropriate authority. However, without spending the money, in terms of the sanction so granted, the accused-persons, in collusion with each other, made false Master Roll forms by committing forgery

and misappropriated the whole amount by falsifying the accounts and preparing false vouchers. The complainant and other witnesses came to know about the said acts done by the accused on visiting the local office, on 15.06.2004, when they inspected the work, which ought to have been done. In all, the accused persons have misappropriated a sum of Rs. 54,331/- in the manner as indicated above. The complainant accordingly sought for prosecution of the accused persons under Sections 167, 407 and 477A read with Section 34 IPC.

3. Having examined the complainant and also upon holding an enquiry, the learned Court below directed issuance of processes, u/s 167 and 409 read with Section 34 IPC, against the two accused petitioners on the ground that a prima facie case, under the said penal provisions, had been made out against the accused-petitioners by the complainant.

4. Aggrieved by the taking of cognizance of the offences aforementioned and also by the direction of issuance of processes against them, the accused-petitioners, as already mentioned above, have come to this Court with the help of this application made u/s 482 Cr.PC.

5. It is submitted, on behalf of the accused-petitioners, that the accused-petitioners are wholly innocent and have been falsely implicated by the complainant. The allegations made against the accused-petitioners, according to the learned counsel for the petitioners, are wholly false and, in such circumstances, the learned Court below ought not to have directed issuance of processes against the accused-petitioners. This apart, points out the learned counsel for the petitioners the accused-petitioners are protected u/s 197 Cr.P.C. and, hence, the learned Court below was not competent to take cognizance of the offences aforementioned and could not have also directed issuance of processes against the accused-petitioners in the absence of requisite sanction having been granted, u/s 197 Cr.P.C., by the State Government.

6. Repelling the submissions made on behalf of the accused petitioners, the learned Additional Public Prosecutor has submitted that the complaint, in question, does make out a prima facie case, as against the accused-petitioners, of commission of offences of misappropriation of Government fund, falsification of accounts and/or commission of forgery in furtherance of their common intention. In such circumstances, contends the learned Additional Public Prosecutor, neither the complaint, in question, is bad in law nor the taking of cognizance of offences, in question, by the learned trial Court and the direction to issue processes against the accused-petitioners, can be legally challenged. In the present case, according to the learned Additional Public Prosecutor, it was no part of the duty of the accused-petitioners to commit forgery or falsification of accounts and/or misappropriation of Government fund and, hence, in such circumstances, the question of obtaining of sanction from the State Government for prosecution of the accused-petitioners, in terms of the provisions of Section 197 Cr.P.C., did not arise at all. No case for quashing of the complaint, submits the learned Additional Public Prosecutor, has been made out by the accused-

petitioners.

7. In the light of the rival submissions, which have been made on behalf of the parties concerned, let me, now, ascertain the legality or otherwise of the act of taking of the cognizance of the offences by the learned trial Court and also the act of directing issuance of processes, against the accused-petitioners, for their prosecution under the penal provisions as reflected by the impugned order.

8. While considering the present application, made u/s 482 Cr.PC., it needs to be noted that the law, with regard to quashing of criminal complaint, is no longer *res integra*. A catena of judicial decisions has settled the position of law on this aspect of the matter. I may refer to the case of *R.P. Kapur Vs. The State of Punjab*, wherein the question, which arose for consideration, was whether a first information report can be quashed u/s 561A of the Code of Criminal Procedure, 1898.

The Court held, on the facts before it, that no case for quashing of the proceeding was made out. Gajendragadkar, J, speaking for the Court, observed that though, ordinarily, criminal proceedings, instituted against an accused, must be tried under the provisions of the Code, there are some categories of cases, where the inherent jurisdiction of the Court can and should be exercised for quashing the proceedings. One such category, according to the Court, consists of cases, where the allegations in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases, no question of appreciating evidence arises and it is a matter merely of looking at the FIR or the complaint in order to decide whether the offence alleged is disclosed or not. In such cases, said the Court, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused. From the case of *R.P. Kapoor (supra)*, it becomes abundantly clear that when a look into the contents of a complaint shows that the contents of the complaint, even if taken at their face value and accepted to be true in their entirety, do not disclose commission of offence, the complaint shall be quashed.

9. As a corollary to what has been discussed above, it is also clear that if the contents of the complaint disclose commission of offence, such a complaint cannot be, ordinarily, quashed.

10. Laying down the scope of interference by the High Court in matters of quashing of FIR or complaint, the Supreme Court, in *R.S. Raghunath Vs. State of Karnataka and another*, laid down as follows:-

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the inherent powers u/s 482 of the Code, which we have extracted and reproduced above, we give the following categories of cases by way of illustration, wherein such power could be exercised either to prevent abuse of the

process of the any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines of rigid formulae and to give an exhaustive list of myriad kinds of cases, wherein such power should be exercised :-

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations made in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of section 155(2) of the Code.

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

(4) Where the allegation in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

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

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

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

11. In the case of Bhajanlal (supra), the Supreme Court gave a note of caution on the powers of quashing of criminal proceedings in the following words :-

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extra ordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

(Emphasis is added)

12. It is clear from a close reading of the principles laid down, in the case of R.P. Kapoor (supra) and Bhajanlal (supra), that broadly speaking, quashing of a First Information Report or a complaint is possible (a) when the allegations made, in the First Information Report or the complaint, even if taken at their face value and accepted in their entirety as true, do not prima facie constitute any offence or make out a case against the accused; (b) when the uncontroverted allegations, made in the FIR or complaint and evidence collected in support of the same, do not disclose the commission of any offence and/or make out a case against the accused; and (c) when the allegations made in the FIR or complaint are so absurd and inherently improbable that on the basis of such absurd and inherently improbable allegations, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

13. More importantly, when a complaint discloses commission of an offence, it cannot, in the absence of any legal bar, prohibit the Court from taking cognizance thereof and/or directing issuance of process against the accused named in the complaint, interference with a complaint is, ordinarily, not permissible in exercise of powers u/s 482 Cr.P.C., on the ground that the accusations, made in the complaint, are made in the complaint are false inasmuch as truth or falsity of the accusations, made in a complaint, are to be determined either by investigation, when the complaint, is not sent to the police by a Magistrate, in exercise of his powers u/s 156(3) Cr.P.C., to the police for investigation or when the complaint is sent to the police for investigation in terms of Section 156(3) Cr.P.C., then, the truth or falsity of the accusations, made in the complaint, are to be determined at the trial.

14. Before proceeding further, it is also imperative to note that a revisional Court cannot mechanically quash a complaint and/ or set aside an order of issuance of process without taking note of the facts as mentioned in the complaint, statement of complainant and statements, if any, of the complainant's witness or witnesses.

15. In the case at hand, apart from Section 409 read with Section 34 IPC, processes have also been directed to be issued u/s 167 read with Section 34 IPC, though Section 167 IPC does not apply to the facts of the case at hand inasmuch as there is no allegation, in the complaint, that the accused-petitioners were charged with the duty to prepare or translate any document or electronic record or to frame, prepare or translate such document or electronic record nor are they alleged to have prepared or translated any document/ record in a manner, which they knew or believe to be incorrect intending thereby to cause or knowing it to be likely to cause injury to any person inasmuch as Section 167 IPC applies only to such a case, where a person, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner, which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person.

16. Coupled with the above, the allegations, in substance, as against the accused-petitioners, are also to the effect that they have falsified accounts. What is, however, imperative to note is that when a person falsifies an account, then, he commits an offence, u/s 477A IPC, if he is a clerk, officer or servant or if, while being employed or acting in the capacity of clerk, officer or servant, he, willfully and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account, which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or willfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account.

17. In the case at hand, while the accused-petitioner No. 2, a Junior Engineer, may be described as an officer, accused-petitioner No. 1 does not fall within the expressions, "clerk, officer or servant" nor can the accused-petitioner No. 1, who is an elected member of an Anchalik Panchayat, be described as a person employed or acting in the capacity of a clerk, an officer or a servant.

18. In the light of what Section 477A IPC embodies, when one turns to the complaint, in question, it clearly emerges that the allegations, which the complainant has made, do make out a prima facie case of commission of an offence, u/s 477A IPC, by accused petitioner No. 2 inasmuch as the accused-petitioner No. 2, as Junior Engineer and as an officer, is alleged to have falsified the accounts for the purpose of enabling the accused-petitioners misappropriate the Government fund. The allegations, made against the accused-petitioners, may or may not be true, but in the face of the contents of the complaint, it cannot be said that no case for criminal breach of trust u/s 409 IPC and/or falsification of accounts, in terms of the provisions of Section 477A IPC, has been made out against the accused petitioner No. 2; whereas a prima facie case of commission of criminal breach of trust by the present accused-petitioner No. 1 as a public servant, can be said to have been made out and, hence, a prima facie case of commission of offence, u/s 409 read with Section 34 IPC, has been, as rightly concluded by the learned Court below, made out as against both the accused-petitioners. This apart, and as already indicated above, a prima facie case of commission of an offence, u/s 477A IPC, has also been made out against the accused petitioner No. 2, who is a Junior Engineer. Furthermore, because of the allegations of preparation of false bills and commission of forgery, which have been made in the complaint, in question, it is also clear that a prima facie case, u/s 471 IPC read with Section 34 IPC, has also been made out.

19. Turning to the submission, made on behalf of the accused petitioners, that they are protected u/s 197 Cr.P.C. and that in the absence of any sanction having been obtained for their prosecution in terms of the provisions of Section 197 Cr.P.C., their prosecution is bad in law, it is apposite to take note of the provisions contained in Section 197 Cr.P.C.

20. Let me, therefore, also quote, at this stage, relevant provision of Section 197 CrPC, which run as follows: "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 - (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 or 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.

21. From a bare reading of Section 197 CrPC, it is clear that when a 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, no Court shall take cognizance of such offence except with the previous sanction of the State government or the Central Government, as the case may be, if the offence is alleged to have been committed by him, while acting or purporting to act in the discharge of his official duty.

22. In short, if an act, which constitutes an offence, is allegedly done by a public servant, who falls within the category of the public servants mentioned in Section 197 CrPC, such a public servant cannot be proceeded against and no cognizance of offence can be taken, without sanction, as contemplated in Section 197 Cr.P.C. if the offence has been committed by him or the act, constituting the offence, is done by him, while acting or purporting to act in the discharge of his official duty.

23. Turning to the question as to whether in the facts and circumstances of the present case, sanction, u/s 197 CrPC, was required, it is pertinent to note that sanction, u/s 197 CrPC, is required only in respect of persons, who are removable from, office by or with the sanction of the Government. It is not in dispute that the accused-petitioner No. 1, being, at the relevant point of time, a Junior Engineer, falls within the category of the public servants, who are covered by the provisions of Section 197 Cr. P.C. However, though the accused-petitioner No. 1 is a public servant, she, as a member of Anchalik Panchayat, is an elected person and can be removed only by members of the Anchalik Panchayat. She is, therefore, not covered by the category of persons mentioned in Section 197 Cr.P.C.

24. While considering the scope and ambit of Section 197 CrPC, it may be borne in mind that the protection, conceived u/s 197 CrPC, is meant to protect responsible public servants from being dragged to vexatious criminal proceedings for offences allegedly committed by them, while acting or purporting to act as public servants. The object, behind Section 197 CrPC, is to afford adequate

protection to public servants in order to ensure that they are not prosecuted for acts done by them in the discharge of their official duties without reasonable cause and without sanction having been obtained from the government concerned for such prosecution. This protection has defined parameters and is limited to such acts, which have been done by a public servant in the discharge or in the: purported discharge of his official duties.

To put it differently, the protection, envisaged u/s 197 CrPC, is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, a public servant acts in excess of his duty, yet if there is a reasonable connection between the act done and the performance of the official duty, the excess will not deprive the public servant of the protection available to him u/s 197 Cr.PC. (See *Bakhshish Singh Brar Vs. Gurmej Kaur and Another*, . See also *State of H.P. Vs. M.P. Gupta*, .

25. While considering the scope of Section 197 Cr.PC, it is apposite to recall the law laid down, in AIR 1948 128 (Privy Council) , wherein the Privy Council held:

a public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty.

This view has been approved by the Privy Council in AIR 1948 156 (Privy Council) .

26. The acts, which Section 197. Cr.PC, seek to protect, are, thus, acts, which fall within the scope and range of the official duties of the public servant concerned. Thus, the protective umbrella of Section 197 Cr.PC extends to only such acts, which fall within the scope and range of a public servant's official duty. In other words, for availing protection u/s 197 Cr.PC, the act of the public servant concerned must not only fall within the scope and range of his official duty, but that the offence must be connected with the official duty and not unconnected therewith. The necessary corollary flowing from this limitation is that when an act is prohibited to be done by a public servant in the discharge of official duty, such act of the public servant, though committed during the discharge of the official duty, will not be protected u/s 197 Cr.PC.

27. From what have been observed above, it is clear that the primary test for determining if an act, which constitutes offence, is an act, which can be claimed to have been done in the discharge or purported discharge of the duty by a public servant, is that when questioned, the officer must be able to say that whatever has been done by him is in the discharge or purported discharge of his duties. There is subtle, but definite distinction between the expression "during the discharge of official duties" and "in discharge of official duty. An officer may be on duty; but what he might have done may be an offence, which will fall outside his duty. For instance, when a Police officer, on duty, commits offence of rape, he cannot say that since he was on duty, the act, done by him, is protected by Section 197 CrPC. The test, therefore, is that the act, which an accused has

allegedly done, must be shown to form part of his duty, though he may have exceeded his powers, while discharging his duties.

28. What is, now, of utmost importance to note is that unless an act, allegedly committed by a public servant of the categories mentioned in Section 197 CrPC, amounts to an offence, the question of taking resort to Section 197 does not arise at all. In other words, an act, which becomes a subject matter of prosecution and sanction in terms of Section 197, must amount to an offence, for, unless an act, complained of, amounts to an offence, the question of taking resort to Section 197 would not arise at all.

29. At the first blush, therefore, the requirement of sanction u/s 197 is paradoxical. On the one hand, Section 197 protects a public servant from being prosecuted without sanction if the act, which constitutes the offence, has been done by him, while acting or purportedly acting in the discharge of his official duties, it (Section 197) allows, at the same time, prosecution of such a public servant without sanction if his act, which constitutes the offence, was done by him, while not acting in the discharge or purported discharge of his duties.

30. Though, in either case, an offence is committed by a public servant, he is, in one case, protected; whereas, in the other case, he is not. It is in this context that the meaning of the expression "while acting or purporting to act in discharge of his official duty" needs to be carefully analysed and understood, for, it can never be a part of the duty of a public servant to commit an offence. Thus, if construed too narrowly, section 197 can never be applied, for, it is no part of the duty of a public servant to commit an offence. At the same time, if the expression, "while acting or purporting to act in the: discharge of his official duty", is construed liberally, it may vest, in a public servant, absolute power and make him berserk.

31. There is yet another significant aspect of Section 197 CrPC, which, unless carefully taken note of, may lead to aberrations in the course of administration of justice. When an act is done, though offence, honestly in the discharge of public duty, it is protected u/s 197. However, when such a public servant dishonestly acts in the discharge of his public duty and thereby commits an offence, can he be still covered by Section 197? The answer to this question has to be in the affirmative, for, such a dishonest act will be covered by the expression "purporting to act in the discharge of his official duty". Thus, not only the honest discharge of a public servant's duty, which may amount to an offence, would be protected u/s 197, but also his dishonest; act, which too may amount to an offence, would be protected if the act can be construed to be in the purported discharge of his duties. It is, therefore, necessary that the act of the public servant is examined in order to test if the act amounts to an offence and if so, whether such an act has been done, while acting or purporting to act in the discharge of his official duties.

32. A classic case, covering the above paradoxical facet of Section 197 Cr.P.C. is

a case, wherein a public servant is alleged to have committed an offence u/s 409 IPC. Will such an offence require sanction for prosecution of the public servant concerned? The answer to this complex question is not far to seek. While, however, ascertaining to answer to the question, so posed, what one has to bear in mind is that in order to constitute an offence u/s 409 IPC, there has to be, firstly, entrustment or dominion over the property and, secondly, such entrustment or dominion must be in the capacity of public servant, thirdly, there must have been disposal of the property, entrusted to the public servant concerned or under the dominion of the public servant concerned, and, fourthly, the disposal of such a property must have been dishonest.

33. Thus, it is clear that the entrustment or dominion over the property would be in official capacity. Similarly, disposal of the property could not have but been done in the official capacity of the public servant concerned. If the disposal of the property was innocent, it was an official act done in discharge of official duty; if the disposal of the property was dishonest, it was the dishonest doing of an official act, but nevertheless the act, in question, was in either case official, because the public servant would not have disposed of the property except while acting or purporting to act in the discharge of his official duty.

34. To put it differently if the act was done innocently, it would be an act done in the discharge of his official duty and if the disposal of the property was with dishonest intention or motive, the act would be an act purportedly done in the discharge of his official duty. Not only in the first instance, but even in the second instance, (i.e., in the case of dishonest disposal of property), the fact remains that the doing of the act by the public servant was still official, though it was purportedly done in discharge of official duty. In the second instance too, therefore, when the public servant is required to be prosecuted for the offence u/s 409 IPC on the ground that he has dishonestly disposed of the property, his prosecution would necessitate obtaining of sanction u/s 197 before cognizance in respect of the offence is taken.

35. To appreciate what has been indicated above, reference may be made to *Shreekantiah Ramayya Munipalli Vs. The State of Bombay*, wherein the Supreme Court explained the scope of Section 197 thus :

Now it is obvious that if Section 197 of the Code of Criminal Procedure is construed too narrowly, it can never be applied, for, of course, it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The Section has content and its language must be given meaning. What it says is - "When any public servant 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." We have, therefore, first, to concentrate on the word "offence". Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the

present case, the elements alleged against the second accused are, first, that there was an "entrustment" and/or "dominion", second, that the entrustment and/ or dominion was "in his capacity as a public servant", third, that there was a "disposal", and fourth, that the disposal was "dishonest". Now it is evident that the entrustment and/or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in official capacity. Therefore, the act, complained of, namely, the disposal, could not have been done in any other way. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event, the act was official, because the second accused could not dispose of the goods save by the doing of an official act, namely officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the other and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it.

36. In *Amrik Singh Vs. The State of Pepsu*, , too, the Supreme Court summed up the scope of Section 197 in these words:

The result of the authorities may thus be summed up: It is not every offence committed by a public servant that requires sanction for prosecution u/s 197(1) of the Code of Criminal Procedure; 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 that, if questioned, it could be claimed to have been done by virtue of the office, then, sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that could really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution.

37. Analyzing the facts of the case, as emerged in *Amrik Singh* (supra) and also quoting with approval the observations made in *Shreekantiah Ramayya Munipalli* (supra), their Lordships held:

In our judgment, even when the charge is one of misappropriation by a public servant, whether action is required u/s 197(1) will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then, sanction u/s 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then, no sanction would be required.

38. A Constitution Bench, in *Matajog Dobey Vs. H.C. Bhari*, , the Supreme Court had occasion to consider the scope of Section 197. Laying down the test to be adopted to ascertain if Section 197 was attracted or not, the Constituent Bench, in *Matajog Dubey* (supra) held,:

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

39. I may also, at this stage, refer to *Pukhraj Vs. State of Rajasthan and Another*, , wherein the Supreme Court held as follows:

While the law is well settled the difficulty really arises in applying the law to the fact to any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for, a person, who ostensibly acts in execution of his duty, still purports so to act, although he may have dishonest intention. Nor is it confined to (sic) cases, where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test, appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence" of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and

parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "cloak of office" and "professed exercise of the office" may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty.

40. In *Rakesh Kumar Mishra Vs. The State of Bihar and Others*, , the Supreme Court, after having referred to its earlier decisions on the question of application of Section 197, observed:

the Section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties, which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in the discharge of his duty, then, it must be given liberal and wide construction so far as its official nature is concerned.

41. In the light of the position of law, as discussed above, in respect of Section 197 Cr.P.C., when one reverts to the case at hand, it deserves to be noted that as far as accused-petitioner No. 1 is concerned, she is an elected member of an Anchalik Panchayat. She is neither appointed by the Governor of the State nor can she be removed by the orders of the Governor. Her election and removal are governed by the Assam Panchayat Act, 1994. She is, therefore, not covered by the provisions of Section 197 IPC. Even if it is assumed that accused-petitioner No. 2 is a public servant, who is appointed by the Governor and can be removed only by an order of the Governor, yet the offences, which he has allegedly committed u/s 477A and/or 409 IPC and/or section 471 IPC, would not, in the facts of the present case, attract the bar imposed by Section 197 IPC. It is not the part of the duty of the accused petitioners to commit, in the context of the facts and circumstances of the present case, criminal breach of trust of money entrusted to them for being utilized for public good. Even if one were to ignore commission of offence u/s 409 IPC, the fact remains that it is no part of the duty of a public servant to commit forgery and/or commit falsification of accounts. Thus, the maintainability of the complaint, in question, cannot be put to challenge by the accused-petitioners.

42. While, therefore, declining to interfere with the impugned order, dated 20.08.2004, it is hereby directed that the accused-petitioner No. 2 shall be proceeded against u/s 477A IPC too. This apart, both the accused-petitioners shall be proceeded against for offences u/s 471 read with Section 34 IPC. The duty to give these directions are imposed on this Court, as a High Court, u/s 483 Cr.P.C. inasmuch as Section 483 Cr.P.C. makes it imperative for the High Court to exercise its superintendence over the Courts of Judicial Magistrates subordinate to it so as to ensure that there is, apart from expeditious disposal, proper

disposal of cases by the Magistrates. Proper disposal of cases would include disposal in accordance with law.

43. When, therefore, a complaint discloses commission of an offence, it becomes the duty of the High Court to pass, by taking resort to Section 483 Cr.P.C. appropriate orders for correction of the processes so that the prosecution of an accused takes place in accordance with law.

44. With the above observations and directions, this revision shall stand disposed of.

45. The interim direction, passed, if any, in this revision, shall accordingly stand vacated. Send back the LCR.