

(2002) 07 GUJ CK 0069

In the Gujarat High Court

Case No : Criminal Revision Application No. 568 of 2001 in Sessions Case No. 78 of 1982

S.S. Khandwala (I.P.S.) Addl. D.G.P. and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 29-07-2002

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 197, 482

Citation : (2002) 22 GLH 556 : (2003) 1 GLR 802

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : K.S. Nanavati, N.Y. Chudgar and P.A. Mehta, for Nanavati Associates, for the Appellant; I.M. Pandya, Assistant Public Prosecutor for Respondent No. 1 and K.J. Shethna, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, J.—This case arising from the complaint of inhuman torture in police custody for three days from 7-10-1976 and allegations of offences under Sections 34, 114, 331, 336, 337, 334, 346, 348, 352, 355 and 365 of the Indian Penal Code, 1860 ("the I.P.C." for short) is dragged on this far through more than seven legal proceedings, inter alia, on the plea of protection of Section 197 of the Code of Criminal Procedure ("the Cr.P.C." for short). Even as the complainant lives on as an invalid septuagenarian, one of the four accused persons is stated to have already passed away. The present revisionists-accused persons are an erstwhile Assistant Superintendent of Police and a Police Sub-Inspector. The common refrain ingenuously agitated in different proceedings, successfully staving off trial for the alleged offences for a quarter of a century, is as to whether the alleged offences were committed while acting or purporting to act in discharge of the official duty of the accused.

2. Before addressing the aforesaid main issue, the background of facts and the

progress of the case may be recounted. On 2-11-1976 was registered the Criminal Case No. 2 of 1976 on a private complaint of Meragbhai Hajabhai (original complainant and respondent No. 2 herein) alleging in substance, inter alia, that on 7-10-1976 his house was searched without any search warrant or authorization, he was whisked away in a police van, confined in Porbandar Police Station and on 8-10-1976, so beaten and ill-treated that he became unconscious and suffered a fracture; that he was shifted to Civil Hospital on 9-10-1976 from where he had to be removed to Jamnagar for operation and even as he was released on bail on 11-10-1976 after formal arrest on 9-10-1976, he remained in the hospital till 23-10-1976 and was brought to the Court on a stretcher on 2-11-1976 when his statement on oath below the complaint was recorded by the Court. The learned Judicial Magistrate, First Class, ordered an investigation by the Court u/s 202 of the Cr.P.C. On 12-2-1979, the learned J.M.F.C., Keshod ordered that the enquiry was stopped u/s 203 of the Cr.P.C. for want of jurisdiction on the ground that the complainant was alleged to have been beaten at Porbandar, which meant that the offence had taken place within Porbandar which was outside the jurisdiction of the learned J.M.F.C., Keshod. The complainant filed Criminal Revision Application No. 21 of 1979 in which, quashing the above order, the learned Sessions Judge, Junagadh, on 18-6-1979, sent the matter back with an order to follow the procedure prescribed in Chapter XIII of the Cr.P.C. By order dated 12-6-1980, the learned J.M.F.C., Keshod again dismissed the complaint u/s 203 of the Cr.P.C. after holding that, prima facie, no offence was disclosed. The complainant again approached the Sessions Court by way of Revision Application No. 54 of 1980 in which, allowing the application, the matter was again remanded to hold further enquiry by the order dated 1-11-1980. Then, taking into consideration the evidence on record and coming to the conclusion that there was a prima facie case, order to issue summons against the accused for offences under Sections 331, 336, 337, 334, 346, 348, 352, 355, 365, 34 and 114 of the I.P.C. was made on 14-12-1981. The offence punishable u/s 331 of the I.P.C. being exclusively triable by the Court of Sessions, the learned J.M.F.C. committed on 16-9-1982 the case to the Court of Sessions, Junagadh wherein, on 20-10-1982, the accused filed an application, before the charge was framed, and contended that all the accused were entitled to protection of the provisions of Section 197 of the Cr.P.C. and the Court could not proceed unless sanction from the Government was obtained. By its order dated 18-12-1982, the Sessions Court held that, under the circumstances, no sanction was required, and therefore, rejected the application and ordered the accused to appear on the next date. The accused also filed an application at Exh. 12 in Sessions Case No. 76 of 1982 against the order dated 14-12-1981 taking cognizance of the offences. The application at Exh. 12 was given on 14-3-1983 and the Court was pleased to register it as Revision Application No. 25 of 1983. The only ground urged for the accused in that Revision Application against taking of cognizance was that there was no application of mind. The learned Sessions Judge dismissed that Revision Application by order dated 19-5-1983. That order was challenged before this Court by way of Special Criminal Application No. 894

of 1983 which remained inexplicably pending for 17 years before the same was withdrawn with liberty to file an application for discharge before the Court below. It was stated at the Bar that during the pendency of the said Special Criminal Application, further proceedings in the trial Court were stayed even as the papers of the matter were not traceable in the High Court.

2.1 The accused, in exercise of the liberty reserved and recorded in the aforesaid order of this Court, filed the application at Exh. 18 u/s 227 of the Cr.P.C., for an order of discharge. While hearing that application it was observed that an earlier application for discharging the accused was already dismissed on merits and the Special Criminal Application No. 894 of 1983 preferred therefrom was withdrawn. Therefore, pending the application, the applicants-accused were directed to obtain necessary directions from this Court regarding liberty to file fresh application for discharge. Upon such direction, being sought in Misc. Criminal Application No. 3661 of 2000, the learned Sessions Judge was directed to hear the discharge application and dispose the same on merits in accordance with law by the order dated 8-8-2000. Then, dismissing the application at Exh. 18 by the order dated 7-5-2001, the learned Sessions Judge observed that the applications preferred by the accused under Sections 197 and 227 of the Cr.P.C. were already decided on merits and the issue of the bar of Section 197 of the Cr.P.C. could not be reagitated. That order was again challenged before this Court in Criminal Revision Application No. 223 of 2001. Allowing the revision and directing the learned Sessions Judge to decide the application at Exh. 18 on merits, the following pertinent observations were made by this Court :

".....After going through the record, I find that the application dated 20-10-1982 was not an application u/s 227 of the Cr.P.C., rather it was an application for quashing the committal order for want of sanction u/s 197 of the Cr.P.C. This was rejected on 18-12-1982. For the first time, the so-called application u/s 227 of the Cr.P.C. was moved on 14-3-1983, but subsequently, it was converted into a revision application on 8-4-1983 and Criminal Revision Application No. 25 of 1983 thus came into existence. The said criminal revision was dismissed on 19-5-1983. The order of conversion of the application u/s 227 of the Cr.P.C. into Criminal Revision is contained in the order dated 8-4-1983 (Annexure-B). Criminal Revision Application No. 25 of 1983 was, thereafter, dismissed on 19-5-1983, hence, it is difficult to accept the contention of the learned Counsel for the respondent that the application u/s 227 of the Cr.P.C. was finally rejected on 19-5-1983. Actually, it was the criminal revision application which was dismissed on this date and not the application u/s 227 of the Cr.P.C.The question of want of sanction u/s 197 of the Cr.P.C. was not discussed on any application u/s 227 of the Cr.P.C. In any case, the bar of Sections 159 and 160 of the Bombay Police Act was not at all considered by the learned Sessions Judge."

2.2 After the above direction of this Court to decide the application at Exh. 18 on merits, in accordance with law, after hearing both the parties and within one

month, the impugned order dated 29-8-2001 dismissing the application was made. In this order, under challenge, the facts, the contentions, the legal provisions and the precedents cited at the bar are discussed in such sequence and manner that leave a lot to be desired.

2.3 During the legal marathon recapitulated above, the accused introduced on 20-12-2000, inter alia, the F.I.R. of Crime Register No. II-43 of 1976 -Porbandar, the case diary of Crime Register No. II-43 of 1976 in respect of the period from 7-10-1976 to 21-10-1976 and the case diary Nos. 15, 16 and 17 dated 12-4-1977 (10-00 to 12-30 hours), 12-4-1977 (7-00 to 11-00 hours) and 7-2-1979 (1-30 to 1-35 hours) respectively. These documents were referred to show that an offence u/s 25A of the Arms Act was registered on 7-10-1976 against an accused, namely, Sale Mohmad Abdul Rehman, and pursuant to investigation thereof, a revolver, a country-made pistol, live cartridges and implements for making arms were recovered by twelve noon of that day. According to the case diaries, upon the complainant in this case being named by the accused in that case, his search in presence of witnesses was carried out on 7-10-1976. On 8-10-1976, after obtaining remand of the accused Sale Mohmad and upon further questioning and investigation, the complainant in the present case was called for questioning, during which he wanted to produce a revolver and its cartridges concealed in the roof of his house. On 9-10-1976, while the complainant was taking out the revolver from under the roofing tiles of his house, his leg slipped from the stairs, he fell down and upon being made to stand up, he complained of pain in his thigh. Thereafter, he was arrested and upon his complaint of pain in the thigh, he was sent with a police yadi to the hospital. Then, several other clues and articles were obtained during the course of investigation and a criminal case u/s 25(1) of the Arms Act against seven accused, including the present complainant, was sought to be made out which was ultimately dismissed on 6-11-1978 as having no proof by a Summary No. 602 of 1978. Thus, an attempt was made by placing some material on record, to show that the accused were acting in discharge of their official duty, and in any case, the accused were entitled to the protection of the provisions of Sections 159 and 160 of the Bombay Police Act, 1951 insofar as the acts were done in good faith pursuant to the duty imposed and the authority conferred or in giving effect in good faith to an order or direction of a person empowered to give such order or direction. By now, as stated at the Bar, the charge is already framed against the revisionists and their plea is also recorded.

3. The learned Senior Counsel Mr. K.S. Nanavati appearing for the revisionists submitted that, even by the allegations of the complainant in the complaint itself, the alleged acts of torture resulting into serious injuries had a direct connection with the discharge of official duties of the accused insofar as they were investigating an offence registered against another accused and were in fact successful in unearthing lethal muddamal. He submitted that the provisions of Section 197 of the Cr.P.C. are primarily intended to enable public servants to fearlessly perform their duties and to shield them against frivolous litigations.

They do not deny the right of a fair trial, but the procedural safeguard provided by law has to be respected. He further submitted that if, out of the several offences alleged against the accused, any one or more of the acts were found to be connected with purported discharge of duty, the bar of Section 197 of the Cr.P.C. would be attracted. It was also submitted that at the time of deciding on 18-12-1982 the application claiming protection of the provisions of Section 197 of the Cr.P.C., the material brought on record by way of case diaries etc. was not before the Court, and in any case, the issue of sanction can be raised and decided at any stage. It was also submitted that the case for discharge in exercise of the powers u/s 227 of the Cr.P.C. was further strengthened by the provisions of Sections 160 and 161 of the Bombay Police Act, 1951 since the trial could not have ended in conviction and punishment of the revisionists. Thus, in short, the arguments on behalf of the revisionists were mainly based upon the protective provisions of Section 197 of the Cr.P.C. and the aforesaid Sections of the Bombay Police Act. Elaborating the arguments, the following judgments were discussed :-

In *Aher Pola Parbat Barad Vs. Chituri Sahib, Asstt. S.P., Veraval and Others*, , wherein the complainant was alleged to have been badly beaten, confined and coerced into making a confession during the investigation of an offence, it was held by this Court that the acts were alleged to have been committed by the accused in discharge of their duty and no prosecution could have been launched without prior sanction of the government. It was observed that : "...If, in course of investigation, the police officers resort to atrocity, the same may amount to an offence, however, it cannot be said that the offence has not been committed in discharge of official duty. If such were the interpretation, Section 197(1) of the Cr.P.C. would become nugatory."

The Constitution Bench judgment of the Supreme Court in *Matajog Dobey Vs. H.C. Bhari*, , was relied upon for the observations therein as under :

"20.....The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

Bajnath Gupta and Others Vs. The State of Madhya Pradesh, was relied upon for the following proposition contained therein :

"16.....It is not every offence committed by a public servant that requires sanction for prosecution u/s 197(1) of the Cr.P.C.; 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. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Cr.P.C. will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable."

The latest in the line of Supreme Court judgments on the issue was the judgment in Rizwan Ahmed Javed Shaikh v. Jammal Patel 2001 AIR SCW 2125, which, after referring and relying upon the earlier Larger Bench judgments in B. Saha and Others Vs. M.S. Kochar, and the judgments in Baijnath v. State of M.P, (supra) and Matajog Dubey (supra), held as under :

"15. The real test to be applied to attract the applicability of Section 197(3) is whether the act which is done by a public officer and is alleged to constitute an offence was done by the public officer whilst acting in his official capacity though what he did was neither his duty nor his right to do as such public officer. The act complained of may be in exercise of the duty or in the absence of such duty or in dereliction of the duty, if the act complained of is done while acting as a public officer and in the course of the same transaction in which the official duty was performed or purports to be performed, the public officer would be protected."

4. The learned Senior Counsel Mr. K.J. Shethna appearing for the original complainant submitted that the complaint, the statement of the complainant and other relevant material on record were examined by the learned Magistrate at the time of taking cognizance and the committal proceedings. The case diaries and other material introduced by the revisionists could be considered at the time of trial and appreciation of evidence, according to the submission. Relying upon the recent judgment of the Supreme Court in Om Vati v. State, Through Delhi Administration 2001 SCC 685, it was submitted that no reasons were required to be recorded when the charges were framed against the accused. Only in a case where it is shown that the evidence that the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before being challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the Court can discharge the accused. The Court was not required to enter into meticulous consideration of evidence and material placed before it at that stage. The High Courts should be loath in interfering at the stage of framing the charges against the accused and self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the Court in the face. The opinion on many matters can differ depending upon the person who views it. There may be as many opinions on a particular point as there are Courts, but that would not justify the Court to interdict the trial. It is also observed in that judgment that unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled for and unjustified litigation under

the cloak of technicalities of law.

4.1 S.P. Vaithianathan v. K. Shanmuganathan 1994 SCC 1311, was relied upon to submit that merely because a person was called through a summons issued under law, the conduct of beating and torturing him on his appearing in obedience to the summons cannot establish any nexus between official act of issuance of summons and the action of the officer on the appearance of the person. In the Three-Judge Bench decision in The State of Andhra Pradesh Vs. N. Venugopal and Others, , it is observed that :

"This Court pointed out that the High Court fell into an error in thinking that whatever a police officer does to a person suspected of a crime at the time when the said officer is engaged in investigating that crime should be held to be done in the discharge of his official duties to investigate, and would therefore, be covered by Section 53 of the Act."

These observations were made in the context of the limitation prescribed in Section 53 of the Tamil Nadu District Police Act, 1869 wherein actions and prosecutions for "anything done or intended to be done under the provisions of this Act" were barred after the prescribed period. Examining similar bar of limitation u/s 64(3) of the Kerala Police Act, 1961 in the context of Section 197 of the Cr.P.C., the observations as under are made by the Supreme Court in PP Unnikrishnan and Another Vs. Puttiyottil Alikutty Anr Another, :

"18. That apart the words used in Section 197(1) of the Code for qualifying the offence are seemingly wider. Those words are these : "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty." In Section 64 (3) of the K. P. Act the offence is qualified as the offence committed by a police officer "on account of any act done in pursuance of any duty imposed or authority conferred on him, by this Act or any other law for the time-being in force or any rule, order or direction lawfully made or given thereunder."

"19. The commission of an offence, while acting or purporting to act in the discharge of his official duty is of a wider radius when compared with an offence committed on account of an act done in pursuance of any duty or authority. In the latter, the act done itself should be an exercise in discharge of his duty or authority and that act should amount to an offence. It is not enough that the act complained of was only purported to be in exercise of his duty though it may be sufficient under the former. So the scope u/s 64(3) of the K. P. Act is much narrower than the amplitude of Section 197(1) of the Code for a public servant to claim protection".

"20. Even u/s 197 of the Code no protection has been granted to public servants for the type of acts alleged in the case against the appellants. Decisions are a legion relating to the scope of the protection u/s 197(1) of the Code. In Matajog Dobey Vs. H.C. Bhari, , this Court made a slight deviation from the view adopted by the Judicial Committee of the Privy Council in AIR 1948 128 (Privy Council) .

This Court after referring to earlier decisions summed up the scope of Section 197(1) of the Code thus :

"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."

The Supreme Court has, in the above judgment, given concrete examples, as under, of the cases which may not have the protection of the aforesaid provisions :

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

4.2 The learned Advocate Mr. Shethna vehemently argued that, in the facts of this case, the alleged inhuman treatment meted to the complainant was wholly outside the scope of any official duty of a police officer in a civilized society. He relied upon the celebrated judgments of the Supreme Court in *D.K. Basu Vs. State of West Bengal*, , and in *Kartar Singh v. State of Punjab* 1994 SCC 899, to submit that torture in custody or during investigation of an offence violated a citizen's fundamental rights enshrined in Arts. 21 and 22 of the Constitution.

5. With the development and assimilation of human rights jurisprudence, it is now well-settled that any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution; whether it occurs during investigation, interrogation or otherwise. As observed in *D.K. Basu (supra)*, if the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. The questions posed in that case were : "Does a citizen shed off his fundamental right to life, the moment a policeman arrests him?" And, "Can the right to life of a citizen be put to abeyance on his arrest?" Answering these questions, it is observed that these questions touch the spinal cord of human rights jurisprudence. The answer, indeed, had to be an emphatic "No". It is also

observed that not only prosecution of the offender is an obligation of the State in case of every crime, but the victim of the crime needs to be compensated monetarily also. To repair the wrong done and give judicial redress for legal injury as a compulsion of judicial conscience, an obligation to pay damages is cast upon the State for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. It is further observed by the Apex Court that the right to interrogate the detenus, culprits or arrests in the interest of the nation, must take precedence over an individual's right to personal liberty. The Latin maxims *salus populi est suprema lex* (the safety of the people is the supreme law) and *salus republicae est suprema lex* (safety of the State is the supreme law) co-exist and are not only important and relevant, but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however, must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be "right nor just nor fair", and therefore, would be impermissible, being offensive to Article 21. State terrorism would only provide legitimacy to "terrorism". That would be bad for the State, the community and above all for the Rule of Law. It is also observed that the duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. In Para 29 of the said judgment, it is observed that police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence, but it must be remembered that the law does not permit use of third degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime.

5.1 In *Kartar Singh (supra)*, the Constitution Bench of the Supreme Court, while dealing with the validity of the T.A.D.A. Act, 1987 observed that it is not the hierarchy of the police officer but the suspicion in mind of the common man about adherence to procedural safeguards which are relevant, for appearance of injustice is denial of justice. Moreover, even if the offenders and the offences under that Act constitute a separate class, the harsher procedure prescribed for dealing with them must satisfy the test of Article 21. Since, deprivation of right of any person by the State is prohibited except in accordance with the procedure established by law, it is to be construed strictly against the State and in favour of the person whose rights are affected. Article 21 is a constitutional command to State to preserve the basic human rights of every person. Existence of right and its preservation, has thus, to be construed liberally and expansively. As a corollary to it the exercise of power by the State has to be construed narrowly and restrictively. It should be so understood and interpreted as not to nullify the basic purpose of the guarantee. No legislative or executive action can be permitted to get through unless it passes through the judicial scanning of it being not violative of the cherished right preserved constitutionally. The procedure adopted by State either legislatively or executively, must therefore, satisfy the

basic and fundamental requirement of being fair and just. The word "except" restricts the right of the State by directing it not to fiddle with this guarantee, unless it enacts a law which must withstand the test of Article 13. The procedure established by law extends both to the substantive and procedural law. Further, mere law is not sufficient. It must be fair and just law. Even in absence of any provision as in American Constitution, fair trial has been rendered the basic and primary test through which a legislative and executive action must pass. Per majority, it is observed that in case of police brutality and atrocities committed in utter disregard and in all breaches of humanitarian law and universal human rights as well as in total negation of the constitutional guarantee and human decency, the Supreme Court is committed to uphold human rights even as a part of long standing heritage and as enshrined in our constitutional law. This perspective needs to be kept in view by every law enforcing authority because the recognition of the inherent dignity and of the equal and inalienable rights of the citizens is the foundation of freedom, justice and peace in the world. If the human rights are outraged, then the Court should set its face against such violation of human rights by exercising its majestic judicial authority. It is also observed by His Lordship K. Ramaswamy, J., that the procedure which smacks of the denial of fundamental fairness and shocks the conscience or universal sense of justice is an anathema to just, fair or reasonable procedure. Arts. 14 and 21 frown against arbitrary and oppressive procedure.

5.2 Against the backdrop of the legal dicta briefly discussed hereinabove, the issues thrown up in the context of this case are, whether the alleged acts of violence which violate the basic human rights can be claimed to have been committed while acting or purporting to act in the discharge of official duty?; and, whether it would be a fair procedure that the State, which may be vicariously responsible for the tortuous acts amounting to several offences, if proved, should be construed to have the authority to grant or refuse to grant sanction for the prosecution of its instrumental officers?

6. Even without reference to the aspect of violation of fundamental rights, it is held by the Constitution Bench of the Supreme Court in *Matajog Dubey* (supra) that there must be a reasonable connection between the act and the 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. In *Kanshi Ram Vs. O.P. Chopra and Others*, , the Delhi High Court has taken the view that physical torture not only affects the body, but also affects the dignity and conscience of an accused. No civilized law or society can recognize this power in the hands of public servants to claim that a sanction is pre-requisite for prosecution where physical torture is manifested. That the dehumanized behaviour on the part of the accused permeates from colonial past which cannot be permitted in Republican India. Ours is a country governed by Rule of Law. Public servants are also governed under the same norms and rules. Nobody can claim any immunity from actions which violate the body of the accused on the ground that said action was in furtherance of their

power to interrogate. Such action would fall outside the purview of purported discharge of their official duties.

6.1 It is observed by this Court in *Prabhudas Badaji Pandav Vs. Faridmiya Huseinmiya Kadari and Another*, , that it is the quality of the act that is important, and if it falls within the scope and range of the official duties, the protection contemplated by Section 197 of the Cr.P.C. would be attracted. It is trite that if Section 197 of the Cr.P.C. is construed too narrowly, it can never be applied as to commit an offence can never be a part of official duty. Therefore, it is not the duty which the Court has to examine so much as the act because an act can be performed in the discharge of official duty as well as in dereliction of duty. 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. Therefore, to be covered under the protective umbrella of Section 197 of the Cr.P.C., the alleged acts should be integrally connected with the authority of office and should fall within the periphery of prescribed duties. The word "while" must be read in the context of the subsequent phrase "acting or purporting to act in the discharge of official duty" and cannot be construed strictly in its meaning of time.

6.2 Para 15 of the judgment in *Rizwan Ahmed (supra)* cannot be read in isolation and has to be read in its factual context. It will be seen that the Supreme Court has, in Para 16, observed that, in that case the cognizance against the accused persons was not taken u/s 323 of the I.P.C. The allegation about being "beaten mercilessly" was found to be too vague, and hence, cognizance for causing hurt to any of the complainants was not taken by the learned Magistrate and none of the complainants had made any grievance about it. The cognizance was taken only under Sections 220 and 342 of the I.P.C. The gravamen of charge was the failure on the part of the accused persons to produce the complainants before a Magistrate within 24 hours of arrest. The complainants were in the custody of the police officers and at the police station. It appeared that the custody which was legal to begin with had become illegal on account of non-production of the complainants before the Magistrate. And it was felt unnecessary to deal with the allegations relating to beating because no cognizance was taken for an offence in that regard.

6.3 It was the view taken in several cases that in deciding whether Section 197 of the Cr.P.C. has any application, the test is the prosecution story and not the defence of the accused, as authoritatively laid down by the Federal Court in the case of *AIR 1939 43 (Federal Court)* , with reference to Section 270(1) of the Government of India Act which was identical with the terms of Section 197 of the Cr.P.C. However, as subsequently held by the Three-Judge Bench of the Supreme Court in *B. Saha and Others Vs. M.S. Kochar*, , in considering the question whether or not sanction for prosecution was required, it is not necessary for the Court to confine itself to the allegations in the complaint. It can take into account all the materials on record at the time when the question is raised and falls for

consideration. Relying on that and going a step further, the Supreme Court has, in *Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others*, , held that the accused would be entitled to produce the relevant and material documents which can be admitted into evidence without formal proof, for the limited consideration of the Court as to whether the necessary ingredients to attract Section 197 of the Code and the consequential ouster of jurisdiction to take cognizance were established or not.

7. The guiding principles that emerge from the survey of the legal dicta with regard to applicability of the provisions of Section 197 Cr.P.C. can be summarized as under :

(a) All the material brought on record for the prosecution as also other material placed or brought on record for the purpose may be considered by the Court in forming the opinion as to whether the provisions of Section 197 . of the Cr.P.C. were applicable in the facts of the case;

(b) The facts coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage;

(c) While it cannot be a part of official duty to commit an offence, every act constituting an offence committed in the course of duty cannot enjoy the protection of Section 197 of the Cr.P.C. The right approach lies between the two extremes. An act constituting an offence will require sanction if it is directly and reasonably connected with the official duty of the accused.

(d) It is the "act" and the quality of the act that is important and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 will be attracted;

(e) There must be a reasonable connection between the act and the discharge of official duty; the alleged 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 or in purported discharge of his duty; and

(f) In case of a gross violation of fundamental right to life, it can hardly be claimed that the alleged act amounting to an offence was committed while acting or purporting to act in the discharge of official duty.

8. Returnin0g to the terra firma of the facts of this case, there is no controversy about the fact that the investigation into a criminal offence was commenced on 7-10-1976 and the person and the premises of the complainant were searched on that day with the result of a "Nil" panchnama. There is also no gainsaying the fact that the complainant was injured before he was formally arrested on 9-10-1976. It would be hazardous and premature to express any opinion about commission of the alleged offences by the petitioners or the plausibility of their defence. The offences alleged against the petitioners are under Sections 331

(voluntarily causing grievous hurt to extort confession or information), 336 (doing any act which endangers human life or the personal safety of others), 337 (causing hurt by an act which endangers human life, etc.), 334 (voluntarily causing hurt on grave and sudden provocation), 346 (wrongful confinement in secret), 348 (wrongful confinement for the purpose of extorting confession or information), 352 (assault or use of criminal force otherwise than on grave provocation), 355 (assault or criminal force with intent to dishonour a person), 365 (kidnapping or abducting with intent secretly and wrongly to confine a person), read with Sections 34 (acts done by several persons in furtherance of a common intention) and 114 (abetment) of the I.P.C. Thus, abduction, grievous hurt, extortion of confession, wrongful confinement and abetment of such offences are the gravamen of the charges against the petitioners. It is for the prosecution to establish the essential ingredients of the alleged offences. But even by the alternative version introduced for consideration by the petitioners, by no stretch any part of the alleged acts was even claimed to be committed while discharging the official duty or to be within the permitted range of official duties of the petitioners. Therefore, it would appear that the claim of the petitioners to the protection of Section 197 of the Cr.P.C. is pretended and fanciful even as none of the alleged acts constituting the offence could even be claimed to have any nexus with the performance of duty or the purported discharge of any official duty.

8.1 The protection claimed by the petitioners under the provisions of Sections 159, 160 and 161 of the Bombay Police Act is also premature and does not deserve consideration at this stage since the acts which are alleged and yet to be proved cannot be taken off the anvil of trial on the presumption, that in any case, the accused would be immune from any penalty or payment of damages as the acts, yet to be proved, could be claimed to have been done in good faith in pursuance or intended pursuance of any duty imposed or any authority conferred on the accused officers.

8.2 Since the alleged offences were committed in the course of a single transaction of allegedly taking into illegal confinement and causing grievous hurt, the series of offences alleged against the accused cannot be bifurcated into offences which may attract the protection of Section 197 of the Cr.P.C. and which may not, as suggested on behalf of the petitioners. Therefore, there is no question of taking out any one offence as requiring the sanction, and then, on the ground of necessity of prior sanction, discharging all the accused of all the offences.

9. As noticed earlier, the issue of the bar of Section 197 was already agitated before the framing of the charges, it was decided against the petitioners by order dated 18-12-1982 of the Sessions Court and that order was never challenged. The subsequent application Exh. 12 dated 14-3-1983 calling into question the taking of cognizance on 14-12-1981 was treated as and converted into Revision Application No. 25 of 1983 and the order therein was challenged before this

Court in Special Criminal Application No. 894 of 1983, which remained pending for 17 years before being withdrawn. The material in the form of case diaries etc., which should have been available at the first instance also, appears to have been introduced for re-agitating the issue of the bar of Section 197. As stated by the original complainant on an uncontroverted affidavit, he, in his seventies, is living the life of a handicapped person since several operations and even after prolonged treatment occasioned by the injuries allegedly caused by the offences, before the trial of which he is dragged into one after the other legal proceedings. It can hardly be doubted that such prolonged litigation would cast an impossible burden on a complainant and any further delay in completion of the trial would completely frustrate the prosecution. It clearly appears from the record that the judicial process and meticulous provisions of the Cr.P.C. providing for judicious checks and balances are put by the petitioners to the use of wearing out the complainant and defeating the ends of justice. The Code of Criminal Procedure recognizes and confirms, in the form of Section 482, the inherent powers of this Court to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice. As laid down by the Apex Court in *Mary Angel and Others Vs. State of Tamil Nadu*, , this extraordinary power to be exercised in extraordinary circumstances and in a judicious manner includes the power to award costs to meet the litigation expenses or to be exemplary to prevent abuse of the process of the Court or to secure the ends of justice. This is such an exceptional case as would find a place in the annals of the administration of justice. It is also, however, clarified that nothing contained in this judgment should be taken as an expression of opinion on the admissibility in evidence or evidentiary value of any material or on the facts in issue before the trial Court.

10. Accordingly, in the facts and for the reasons discussed hereinabove, the Revision Application is rejected and Rule is discharged with the direction that the Sessions Court, Junagadh, shall hear and dispose the Sessions Case No. 76 of 1982 as expeditiously as practicable and preferably on day-to-day basis within six months from today; and the petitioner Nos. 1 and 2 each shall pay to the respondent No. 2, by way of compensatory and exemplary costs, Rs. 10,000/- within fifteen days.

11. The request made by the learned Counsel for the petitioner for staying the operation of this order is rejected.