

(2023) 05 GUJ CK 0046

In the Gujarat High Court

Case No : R/Special Criminal Application No. 3194 Of 2014

Umesh Gopichand Goel & 2 Other(S)

APPELLANT

Vs

State Of Gujarat & 1 Other(S)

RESPONDENT

Date of Decision : 11-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 53, 77, 226, 227
Central Excise Rules, 1944 — Rule 9(1), 52A, 173F, 173G(2)
Indian Penal Code, 1860 — Section 114, 166, 167, 219, 323, 330, 342, 504, 506(1)
Code Of Criminal Procedure, 1973 — Section 197, 197(1)
Bombay Police Act, 1951 — Section 161
Karnataka Police Act, 1963 — Section 170

Citation : (2023) 05 GUJ CK 0046

Hon'ble Judges : Ilesh J. Vora

Bench : Single Bench

Advocate : Bhadrish S Raju, Bhadrish S Raju, RC Jani

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. Rule. With the consent of learned counsel for the parties, rule is fixed forthwith. The question that has come for consideration in this case is whether sanction under Section 197 is necessary from the Central Government before prosecuting the applicants for the offence punishable under Section 504 of the Indian Penal Code.

2. The second respondent – Manishbhai was working as an Assistant Dying Master with Vishnu Dying and Printing Mills Pvt. Ltd., Kadodara at Surat. In the year 1998, the applicant no.1 was posted as Assistant Commissioner of Central Excise Division-II, Surat-1, whereas the applicant no.2-B.P. Meena and applicant no.3-K.C. Meena were posted and working as Inspector with the Excise Department, Surat. On the basis of intelligence with respect to large scale evasion of Central Excise Duty by M/ s.Vishnu Dying Mill, the applicant no.1-U.G.

Goel, being Assistant Commissioner, raided the premises for preventing checks. The applicant no.1 along with applicant nos.2 and 3 visited the place at about 18:00 hours on 24.04.1998 and carried out extensive search in the presence of two independent panch – witnesses. The Directors of the Mill and other employees including respondent no.2 – Manishbhai, Assistant Dying Master were present at the place. During the search, the incriminating material like delivery challans, pocket diaries, registers, note-books were seized and recovered from the office of respondent no.2 and area of the mill. During the raid, the respondent no.2-Manish Bagdawala, alleged that he was assaulted by the applicant no.1 so as to pressurize him to confess the certain things. He complained of acute stomach pain and was taken to Sanjivani Hospital at Surat where he refused to take further medical treatment and nothing against the applicants, stated in the form of history before the doctor. On the next day i.e. 25.04.1998, he filed an FIR being I-C.R.No.77 of 1998 for the offences punishable under Sections 342, 330, 323, 506(1) and 114 of the Indian Penal Code against the officer of the Excise Department. On the same day, the applicant no.1 had also lodged an FIR against the respondent no.2 and others inter alia alleging therein that the accused have obstructed the raid proceedings and tried to take away the seized incriminating material.

(i) On 25.04.1998, the raid proceedings at the mill premises was continued by the official of the Excise Department. The mill as well as Directors were indulged in illegal activities of manufacturing fabrics and evasion of excise duty worth Rs.3.54 crores unearth during the inquiry proceedings and penalty of the same amount imposed upon the company and its Director. The order of directing to pay the excise duty and penalty thereof passed by the Commissioner, Central Excise was challenged before the Appellate Tribunal by preferring the appeal and same was upheld by the Tribunal. The order of the Tribunal challenged before the Apex Court and the Apex Court while dismissing the SCA filed by the company and its Director confirmed the order of the Commissioner.

(ii) In the aforesaid facts, pursuant to the lodgment of the FIR being I-C.R.No.77 of 1998 filed by the original informant – respondent no.2 herein, the Investigating Agency of Palsana Police Station, Surat, did not find any substance so far offences punishable under Sections 342, 330, 323, 506(1) and 114 of the Indian Penal Code are concerned. However, the police came to a conclusion that the applicants herein committed an act of "intentional insult with intent to provoke breach of peace", allegedly punishable under Section 504 of the Indian Penal Code is made out and accordingly, chargesheet for the offence punishable under Section 504 of the Indian Penal Code, came to be filed. The learned Magistrate Court at Palsana, Surat, after hearing the second respondent, accepted the report submitted by the Investigating Agency and took cognizance of the offence under Section 504 of the Indian Penal Code and issued process against the applicants herein.

(iii) Aggrieved with the order of issuing process, the applicants had preferred an

application under Section 197 of the Indian Penal Code inter alia stating that, the act complained in the FIR had a reasonable nexus with the official duties of the applicants and therefore, no criminal proceedings could be initiated against the applicants without obtaining sanction of the Government. The learned Trial Court rejected the application, holding that the applicants failed to establish the facts that they are public servants not removable from their office save by or with the sanction of the Government. The order of the Trial Court challenged before the Revisional Court. The Revisional Court, agreeing with the reasons recorded by the Trial Court, dismissed the revision. The matter reached before this Court. The Coordinate Bench of this Court, vide its order dated 16.12.2021, relegated the applicants to file a fresh application before the Trial Court.

(iv) Pursuant to the order passed by the Coordinate Bench of this Court, the applicants moved an application Exh.62, inter alia stating that at the relevant time, they were employees of the Central Government and their parent department is Ministry of Finance, Department of Revenue and their service conditions governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965. It is averred in the application that as per the Rules, their appointing authority is the President of India and they cannot be removed from their office without the sanction of the Government. In support of such claim, the applicants have placed on record the necessary notification of the promotion, posting and other Misc. orders to show that, they are public servant, not removable from their office save by or with sanction of the Government.

(v) The Judicial Magistrate First Class at Palsana vide order dated 30.04.2012 passed below Exh. 62 in Criminal Case No. 371 of 2010, did not agree with the contentions raised by the applicants and rejected the application filed under Section 197 holding that the documents placed by the applicants would not prima-facie establish that, the applicants being the public servant, can be removed, with the prior sanction of the Government. The learned trial Court further held that, there are sufficient grounds to proceed against the applicant accused for the offence under Section 504 of the Indian Penal Code and the offence is reasonably not connected with the discharge of their official duty and therefore, the benefit cannot be extended as provided under Section 197 of the Cr.P.C.

(vi) Dissatisfied with the aforesaid order dated 30.04.2012 passed below Exh. 62, the applicants preferred Revision Application No. 162 of 2012 before the Additional Sessions Court, Surat camp at Bardoli. Vide order dated 12.07.2014, the Revisional Court, while, dismissing the Revision, observed that, the trial Court did not have committed any error of law and considering the allegations made in the FIR, prima-facie case under Section 504 of the Indian Penal Code is made out against the accused and act complained cannot be alleged to have committed by them while acting or purporting to act in their discharge of their official duty and therefore, bar as provided under Section 197 is not applicable.

3. Being aggrieved and dissatisfied with the aforesaid orders passed by the

courts below i.e. 30.04.2012 and 12.07.2014, the applicants – original accused have preferred this application under Articles 226 and 227 of the Constitution of India read with Section 482 of the Cr.P.C., to quash the impugned orders as well as the proceedings of Criminal Case No. 371 of 2010 for the offence punishable under Section 504 of the IPC.

4. This Court has heard learned counsel Mr. Bhadrish S. Raju, Mr. R.C. Jani and Mr. L.B. Dabhi, for the respective parties.

5. Mr. Bhadrish Raju, the learned counsel appearing for and on behalf of the applicants, raised the following contentions :

(i) That pursuant to the order passed by the co-ordinate Bench of this Court, the applicants herein placed on record the necessary documents, to establish prima-facie the fact that, the applicants are public servants, serving with the Revenue Department, Ministry of Finance and their appointment authority is the President of India and they cannot be removed without sanction of the Central Government. Despite of these admitted facts, the learned courts below have mechanically rejected the application filed under Section 197 of the Cr.P.C. and therefore, the impugned orders are contrary to the law and evidence on record;

(ii) That, pursuant to the raid conducted by the applicants at the mill premises, the evasion of excise duty unearth to the tune of Rs.3.54 crores and after inquiring into the matter, the company and its Directors found guilty for the illegal manufacturing of fabrics without paying the excise duty and the authority concerned directed the Company and its Directors to pay the amount of evasion and penalty thereof and the same has attained the finality upto Supreme Court and Excise Department initiated the proceedings of attachment to recover the amount of Rs.7 crore. The Excise Department initiated criminal prosecution against the mill and its Directors under Rule 173F, read with Rule 9(1), Rule 173G(2) read with Rule 52A of Central Excise Rules, 1944 for the contravention of the provisions of Central Excise Act, 1944 and same is pending before the court concerned. Thus, therefore, it prima-facie established that, the offence alleged, was committed by the applicants while acting in the discharge of their official duty;

(iii) That the courts below ought to have held that, the FIR was in gross abuse of process and filed with malafide intention by the respondent no. 2 – Manishbhai, who was an employee of the mill and at the behest of Directors, it was filed with a view to harass the applicants and to exert pressure on them;

(iv) That, the courts below ought to have appreciated that the alleged offence said to have been committed by the applicants while they were discharging their duties as a public servants and therefore, the act complained is directly connected with the official duties of the applicants and the case of the applicants falls under the parameters of Section 197 of the Cr.P.C.;

(v) That, the protection given under Section 197 is to protect the responsible

public servants against the institution of vexatious proceedings for the offence alleged to have been committed by them while, acting or purporting to act as a public servant and the protection is available when the act complained is reasonably connected with the discharge of his/their official duties and in that view of the matter, considering the peculiar facts and circumstances of the present case, the sanction is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty.

6. In the aforesaid contentions, learned counsel Mr. Raju submitted that, the decisions are grossly erroneous and judicial discretion having not been properly exercised by the courts below and therefore, case is made out warranting interference by this Court in exercise of inherent powers.

7. In support of the contentions, he cited the following case laws:

- (i) Matajog Dubey Vs. H.C. Bihari, AIR 1956 SC 44;
- (ii) Krishnakumar Vs. Divisional Asst, 1979 (4) SCC 289;
- (iii) Bhappa Singh Vs. Ram Pal Singh & Ors., 1981 (Supp) SCC 12;
- (iv) Deepak Kumar Vs. UOI, 1996 SCC Online Raj 357;
- (v) Gaurishankar Prasad Vs. State of Bihar, 2000(5) SCC 15;
- (vi) Abdul Wahab Ansari Vs. State of Bihar, 2000(8) SCC 500;
- (vii) Prakash Singh Badal & Ors Vs State of Punjab & Ors, 2007(1) SCC 1;
- (viii) J.P. Singh & Ans Vs. Vinay Kanodiya, Cr.M.A. 4308 of 2009
- (ix) General Officer Commanding Vs. CBI, 2012 (6) SCC 228;
- (x) Om Prakash & Ors Vs. State of Jharkhand, 2012(12) SCC 72;
- (xi) Devendra Singh & Ors Vs. State of Punjab, Thr. CBI, 2016(12) SCC 87;
- (xii) D. Devraja Vs. Owaisi Sabeer Hussain, 2020(7) SCC 695;

8. On the other hand, countering the above arguments, Mr. R.C. Jani for R.C. Jani and Associates, appearing for and on behalf of the respondent no. 2 – original informant and State Counsel Mr. Dabhi, submitted that, despite the order passed by the Co-ordinate Bench of this Court, the applicants herein failed to establish prima-facie fact that, they are public servants, not removable from their office with the sanction of the Government. The learned trial Court has categorically observed that the documents placed on record are not satisfactory on the point. Thus, the basic requirement for extending the benefit of Section 197 is not established. Thus, therefore, the learned trial Court as well as Revisional Court have rightly rejected the application. The second issue raised is that, the act alleged, having been committed, is entirely unconnected with the official duties of the applicants. The act of insults, which gives the provocation to

the other side, cannot be termed as an act of 'official duty' or attributable to the discharge of 'official duty'. Thus, the act complained is an individual act, having no any direct connection with the performance of the official duty and therefore, the bar as provided under Section 197 is not applicable to the facts of the present case. The third contention is that, the learned trial Court observed that prima-facie case is made out for the offence punishable under Section 504 of the Indian Penal Code, for which the learned trial Court issued process. In such circumstances, it is submitted that the order of the trial Court, is discretionary in nature and it should not be lightly interfered with, unless it established that the findings recorded by the courts below are patently erroneous and perverse.

9. In support of aforesaid contentions, Mr. Jani, learned counsel for the respondent no. 2 relied on the following authorities:

- (i) State of Gujarat Vs. Jaysinh Ajitsinh Chauhan, Laws(GJW) 2013 6 257;
- (ii) Piyeja Mohanbhai Maganbhai & Ors Vs. State of Gujarat & Anr., Laws (GJH) 2017 5 165;
- (iii) Chandan Kumar Basu Vs. State of Bihar, Laws (SC) 2014 7 30;
- (iv) D. Devaraja Vs. Owais Sabeer Hussain, Laws (SC) 2020 6 22;
- (v) P.K. Pradhan Vs. State of Sikkim Represented By the Central Bureau of Investigation, Laws (SC) 2001 7 52;

10. With the aforesaid contentions, it was prayed that when judicial discretion having been properly exercised by the courts below, no exceptional case is made out warranting interference by this Court and therefore, the application is misconceived and is liable to be dismissed.

11. Having heard the learned counsels for the respective parties and on perusal of the findings recorded by the courts below and material placed on record, the issue falls for my consideration is whether on allegations made in the FIR and material available of record, Section 197 of the Cr.P.C, is applicable to the facts of the case?

12. It is not in dispute that on 24.04.1998, the applicants being a High Ranking Officials of the Excise and Customs Department, Surat, conducted a raid at the mill premises for preventive checks. During the search proceedings, they recovered and seized incriminating material with respect to evasion of the excise duty and after inquiry, the evasion of excise duty found to the tune of Rs.3.54 crores, for which, the company and its Directors directed to pay the amount of evasion and penalty thereon, to the tune of Rs.7 crores and the order of the Commissioner, Surat has attained the finality upto Supreme Court. The applicant no. 1 was posted and working at Surat as Assistant Commissioner of Central Excise, whereas, the applicant nos. 2 and 3 were posted as Inspector with the Department. During the search operation, the private respondent no. 2 lodged an FIR for the offences as referred above. The investigating agency did not find any

substance in the offences referred in the FIR, however, they filed the chargesheet under Section 504 of the Indian Penal Code against the applicants. It needs to be noted that, there is no any allegation made by the private respondent that, the applicant no. 1 intentionally insulted him to provoke breach of peace. The applicant no. 1 had also lodged an FIR on the same day against the private respondent no. 2 and Director of the mill, alleging that during the search proceedings, the accused have obstructed them in performing their official duties. In such circumstances, this Court is of considered opinion that, the allegations is directly or reasonably connected with the official duties of the raid conducted by the applicants herein. The act complained of, was alleged to have been committed by the applicants, while they were on their official duties.

13. The applicants herein claimed the protection as provided under Section 197 of the Cr.P.C. Section 197 is set out as under:

197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

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

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

(2) XXX

(3) XXX

(4) XXX

14. A bare reading of the Section lays down that, no court can take cognizance of any offence alleged to have been committed by a person who is or was a Judge, or Magistrate or a Public Servant not removable of his office save by or with the sanction of the government, while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the appropriate Union or the State Government.

15. In order to avail the benefit of Section 197, it is required to be established that the offence mentioned therein must be committed by public servant and the public servant employed in connection with the affairs of the Union or State is not removable from his office, save by and sanction of the appropriate government. The protection 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.

16. The object of sanction of prosecution as provided under Section 197 is to protect the public servants discharging official duties and functions from harassment by initiation of frivolous retaliatory criminal proceedings. [Pukhraj Vs. State of Rajasthan, (1997) 2 SCC 701, Matajog Dobey Vs. S.C. Bhari, AIR 1956 SC 44, State of Orissa Vs Ganeshchandra Jew (2004) 8 SCC 40]

17. In the case of D. Devraja Vs. Owais Sabeer Husain (2020) 7 SCC 695, the Apex Court, after referring various decisions, discussed the scope of Section 197. The relevant paras 37 to 46 read thus,

"37. The scope of Section 197 of the old Code of Criminal Procedure, was also considered in P. Arulswami v. State of Madras, where this Court held (AIR p.778 para-6) :

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

If the act is totally 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...."

38. In B. Saha and Others v. M. S. Kochar, this Court held (SCC p.185, para18) :

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

39. In Virupaxappa Veerappa Kadampur v. State of Mysore cited by Mr. Poovayya, a three Judge Bench of this Court had, in the context of Section 161 of the Bombay Police Act, 1951, which is similar to Section 170 of the Karnataka Police Act, interpreted the phrase "under colour of duty" to mean "acts done under the cloak of duty, even though not by virtue of the duty".

40. In Virupaxappa Veerappa Kadampur, this Court referred (at AIR p.851, para 9) to the meaning of the words "colour of office" in Wharton's Law Lexicon, 14th Ed. Which is as follows:

"Colour of office" When an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour."

41. This Court also referred (at AIR p. 852, para 9) to the meaning of "colour of office" in Stroud's Judicial Dictionary, 3rd Edition, set out herein below:

"Colour: "Colour of office" is always taken in the worst part, and signifies an act evil done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office is but a veil to the falsehood, and the thing is grounded upon Vice, and the Office is as a shadow to it. But 'by reason of the

office' and 'by virtue of the office are taken always in the best part."

42. After referring to the Law Lexicons referred to above, this Court held (Virupaxappa Veerappa Kadampur Case, AIR p.852, para-10):

"It appears to us that the words under colour of duty have been used in s.161(1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police officer) prepares a false Panchnama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in Stroud's Dictionary as a veil to his falsehood. The acts thus done in dereliction of his duty must be held to have been done "under colour of the duty".

43. In *Om Prakash v. State of Jharkhand*, this Court, after referring to various decisions, pertaining to the police excess, explained the scope of protection under Section 197 of the Code of Criminal Procedure as follows (SCC p.89 para-32)

"32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (*K. Satwant Singh* [AIR 1960 SC 266]). The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection (*Ganesh Chandra Jew* [(2004) 8 SCC 40 : (AIR 2004 SC 2179)]). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood."

(Emphasis supplied)

44. In *Sankaran Moitra v. Sadhna Das*, the majority referred to *Gill v. R.H.H.B. Gill v. Emperor*; *Shreekantiah Ramayya Munippali v. State of Bombay*, *Amrik Singh v. State of Pepsu*; *Matajog Dobey v. H.C. Bhari*; *Pukhraj v. State of Rajasthan*; *B. Saha and Others v. M.S. Kochar*; *Bakhshish Singh Brar v. Gurmej Kaur*; *Rizwan Ahmed Javed Shaikh and Others v. Jammal Patel and Others* and held : (*Sankaran Moitra Case*, SCC pp.602-603, para25)

"25. The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the

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

45. The dissenting view of C. K. Thakkar J. in *Sankaran Moitra*, supports the contention of Mr. Luthra to some extent. However, we are bound by the majority view. Further more even the dissenting view of C.K. Thakkar, J was in the context of an extreme case of causing death by assaulting the complainant.

46. In *K.K. Patel and Another v. State of Gujarat*, this Court referred to *Virupaxappa Veerappa Kadampur* and held:- (*K.K. Patel Case*, SCC p.203, para-17)

"17. The indispensable ingredient of the said offence is that the offender should have done the act "being a public servant". The next ingredient close to its heels is that such public servant has acted in disobedience of any legal direction concerning the way in which he should have conducted as such public servant. For the offences under Section 167 and 219 IPC the pivotal ingredient is the same as for the offence under Section 166 IPC. The remaining offences alleged in the complaint, in the light of the averments made therein, are ancillary offences to the above and all the offences are parts of the same transaction. They could not have been committed without there being at least the colour of the office or authority which the appellants held."

18. The Apex Court in the case of *D. Devraja* (supra), discussed the settled law relating to the requirement of sanction to entertain and/or take cognizance of an offence, allegedly committed by public servant. The relevant paras 66 to 72 read thus:

"66. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate government.

67. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a police man assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

68. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of government sanction for initiation of criminal action against him.

69. The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.

70. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.

71. If the act alleged in a complaint purported to be filed against the policeman

is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate government is obtained under Section 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act.

72. On the question of the stage at which the Trial Court has to examine whether sanction has been obtained and if not whether the criminal proceedings should be nipped in the bud, there are diverse decisions of this Court.”

19. In light of the settled law propounded by the Apex Court and applying the same to the facts of present case, this court is of the considered opinion that, before the learned trial Court sufficient material placed by the applicants to demonstrate that the offence complained of was committed by the applicants while discharging their official duty. The documents referred by the trial Court clearly established that, the applicants were appointed by the President of India and their parent department is Revenue, Ministry of Finance. The attention of the Court was also drawn regarding the applicable service Rules namely - Central Civil Services (Classification, Control and Appeal) Rules, 1965 to submit that they were appointed and promoted by the orders of President of India and can only be removed from their office with the sanction of the Central Government. The learned trial Court as well as Revisional Court failed to consider the constitutional provision with respect to executive powers of Union as provided under Article 53 of Constitution of India. Article 53 provides that, the Executive Power of the Union shall be vested in the President and shall be exercised by him directly or through Officers Sub-ordinate to him in accordance with the constitution. Article 77 is pertaining to conduct of Government business, which says that, all the Executive Action of Government of India, shall be expressed in the name of President and President shall make the Rules of the business of the Government of India and for the allocation amongst the ministries. The applicants herein recruited by Department of Revenue, Union of India, Ministry of Finance. The documents referred by the trial Court, indicates that the Executives of the Departments like Secretary or Joint Secretary, as the case may be, having all the powers to remove or dismiss the employee. Thus, in nutshell, based on the power of delegation and procedure of channel of submission, time to time framed by the Union Government and considering the applicable service rules, it prima-facie, established that, at relevant time, applicants were public servants, employed by the Union, not removable from their office with the sanction of the Central Government. Thus, therefore, I am satisfied that the courts below were in error in holding that there is no sufficient evidence brought to the notice of the Court to establish that, the applicants cannot be removed from their service without the sanction of the government.

20. Reverting to the facts of the present case, the applicants had raided the mill premises for preventive checks and act of raid was the part of their official duty and therefore, during the search, the allegations as alleged in the FIR leveled by the respondent no. 2 that he was insulted with intent to provoke the peace. In

such circumstances, it cannot be said that, the alleged act done by the applicants is not directly connected with the discharge of their official duty. The facts of the FIR lodged by the applicants against the private respondent in discharging the public duty and subsequent private complaint under the Excise Act, would show that the alleged offence under Section 504 and official duty are so inter-related that it would be difficult to separate them and in that view of the matter, the protection as provided under Section 197 is required to be extended to the public servants i.e. present applicants.

21. For the foregoing reasons and considering the peculiar facts and circumstances of the present case, this Court is of the considered opinion that, the findings recorded by the trial Court are without applying the principles of law correctly and to prevent the failure of justice, the orders passed by the courts below dated 30.04.2012 passed below Exh. 62 in Criminal Case No. 371 of 2010 and order dated 12.07.2014 passed by the Revisional Court are not sustainable in law and reasons recorded for not extending the benefit of protection under Section 197 of the Code, are patently erroneous and perverse and therefore, same are required to be quashed and it is quashed.

22. Resultantly, the application Exh. 62 filed in Criminal Case No. 371 of 2010 is hereby allowed. In view of the bar of Section 197 of the Cr.P.C, the trial Court could not have issued the process against the applicants without prior sanction of the authority and/or Union Government. Accordingly, the proceedings of the Criminal Case for the offence punishable under Section 504 of the Indian Penal Code is hereby quashed.

23. In the result, petition is allowed to aforesaid extent. Rule is made absolute to aforesaid extent. It is clarified that, it shall be open for the private respondent to file fresh proceedings by following the procedure prescribed by law. Direct service permitted.