

(2019) 04 JH CK 0038

In the Jharkhand High Court

Case No : Criminal Revision No. 576, 972 Of 2017, I.A. No. 9905 Of 2018, 450 Of 2019

Yogendra Saw @ Yogendra Sao And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 26-04-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 385, 386, 387
Code Of Criminal Procedure, 1973 — Section 197, 197(1), 313, 321, 397
Air (Prevention And Control Of Pollution) Act, 1981 — Section 31(A)
Contempt Of Courts Act, 1971 — Section 3

Citation : (2019) 04 JH CK 0038

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : K.T.S. Tulsi, Kaushik Sarkhel, Pandey Neeraj Rai, Jai Prakash

Final Decision : Dismissed

Judgement

1. I.A. No.9905 of 2018 in Cr. Revision No.576 of 2017 and I.A. No.450 of 2019 in Cr. Revision No.972 of 2017 have been filed on behalf of the applicant-Ramgarh Sponge Iron Private Limited seeking intervention and for impleading it as opposite party no.2.

Having heard learned counsel for the parties and for the reasons stated in the said interlocutory applications, the learned counsel for the applicant-Ramgarh Sponge Iron Private Limited is permitted to address this Court.

I.A. No.9905 of 2018 and I.A. No.450 of 2019 stand disposed of.

2. Both these revision petitions have been filed, challenging the legality, propriety and correctness of the common judgment dated 1st April, 2017 passed by Sri Anil Kumar Mishra, Additional Sessions Judge-II, Hazaribagh in Cr. Appeal Nos.17 of 2015 and 24 of 2015, whereby the said Court dismissed the appeals preferred by the petitioners by upholding the judgment of conviction and order of

sentence dated 28th January, 2015 passed by the Sub Divisional Judicial Magistrate, Hazaribagh.

Further challenge has been made to the judgment of conviction and order of sentence dated 28th January, 2015 passed by the Sub Divisional Judicial Magistrate, Hazaribagh in connection with G.R. No.2303 of 2011, whereby the petitioners have been convicted for the offences punishable under Sections 385/34, 386/34 and 387/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of one year under Section 385/34 of the Indian Penal Code, rigorous imprisonment for two years and six months under Section 386/34 of the Indian Penal Code and rigorous imprisonment for two years under Section 387/34 of the Indian Penal Code, however, all the sentences have been directed to run concurrently.

3. The case of the prosecution, as it appears from the written report of Birendra Prasad Rai, Manager, Personnel of Ramgarh Sponge Iron Private Limited, Hosir (P.W.5), in brief, is that on 25th August, 2011 the informant was working in his factory office at Hosir. During that time, one Randhir Gupta- the petitioner of Cr. Revision No.972 of 2017 (hereinafter to be referred as 'P-1'), the personal associate of Yogendra Sao, a Congress Worker, the petitioner of Cr. Revision No.576 of 2017 (hereinafter to be referred as 'P-2') called the informant at the factory gate and asked him as to why he did not pay the demanded money of Rs.5.00 lacs to P-2. Thereafter, P-1 contacted P-2 on his mobile phone and forced the informant to talk to him whereupon P-2 threatened the informant as to why the demanded money of Rs.5.00 lacs was not sent to him as yet. P-2 further threatened the informant that the said factory would be closed and also threatened him to kill. It was further alleged in the written report that 3-4 months prior to the said occurrence when P-2 was a member of the Committee of Jharkhand Legislative Assembly on Pollution Control, he and P-1 had threatened the informant on his Mobile No.9386613800 from different mobile numbers i.e. 9431501558, 9131819971 and 9431168642 by demanding Rs.5.00 lacs near Argadda Check Post. It was also alleged by the informant that P-1 was in habit of coming to the factory on regular intervals and used to threaten him to fulfil the demanded money failing which he would be killed.

On the basis of the said written report, a first information report, being Giddi P.S. Case No.55 of 2011, was registered against the petitioners under Sections 385 and 387 of the Indian Penal Code on 25th August, 2011. The police after investigation submitted the charge sheet against the petitioners and, thereafter, the cognizance of the offences under Sections 385, 386 and 387/34 of the Indian Penal Code was taken against the petitioners.

4. The trial of the case commenced and the prosecution in order to prove the charges against the petitioners examined altogether nine witnesses. P.W.1- Bandi Ram Toppo is the Investigating Officer of the case; P.W.2- Madan Mohan Singh, second Investigating Officer of the case; P.W.3- Nand Kishore Mahato, caretaker of Gymkhana Club, Ramgarh; P.W.4- Ram Awadh Singh, General Supervisor of

Ramgarh Sponge Iron Factory; P.W.5- Birendra Prasad Rai, informant of the case; P.W.6- Kameshwar Prasad, Security Guard; P.W.7- Ranjeet Kumar Jha, Liaisoning Officer of Ramgarh Sponge Iron Factory; P.W.8-Mahavir Prasad Rungta, owner of Ramgarh Sponge Iron Factory; and P.W.9- Alok Kumar, Police Inspector, who proved the call details report (for short 'CDR'), marked as Ext.6.

The defence also examined one witness, namely, Radhe Shyam Sahu (D.W.1) in support of its case.

5. The learned Trial Court after appreciating the evidences of the prosecution and the defence came to a finding that the informant gave the vivid description of the occurrence, which was supported by the testimony of P.Ws.5, 6 and 7. The prosecution story of committing of extortion by the petitioners was also supported by P.W.8, who specifically deposed that he got an amount of rupees one lac paid to P-2 through P-1. P.W.8 also deposed that he gave rupees one lac to P-2 at Gymkhana Club in presence of P.W.7. The fact stated by P.W.8 regarding his visit to Gymkhana Club was also supported by P.W.3. Learned Trial Court also came to a finding that the CDR of the mobile phones proved the fact of talk between the petitioners and the informant. The trial court also held that the petitioners were duly identified by the informant and reached a finding that there were clinching evidence against the petitioners who in furtherance of common intention put the informant in fear of injury in order to commit extortion and they also managed to extort the part amount.

6. The learned Additional Sessions Judge, Hazaribagh, while disposing of the appeal preferred by the petitioners, dealt with the grounds urged by them. The learned appellate court observed that all the prosecution witnesses proved the fact that the petitioners, prior to 25th August, 2011, were committing extortion against the informant and P.W.8- the owner of the factory by putting them in fear of grievous hurt/death and lastly on 25th August, 2011, P-1 committed extortion against the informant at the factory gate and made him to talk to P-2 who threatened him with dire consequence and demanded Rs.5.00 lacs as extortion by putting him in fear of death. It was also held by the learned appellate court that no inconsistency was found in the version of the prosecution witnesses regarding place, date, time and manner of occurrence, whereas the defence failed to draw any contradiction in the testimony of the prosecution witnesses so as to create any doubt on the prosecution story.

7. Heard learned counsel for the parties and perused the materials available on record.

8. Mr. K.T.S. Tulsi, learned senior counsel, appearing on behalf of the P-2, and Mr. Kaushik Sarkhel, learned counsel, appearing on behalf of the P-1, have assailed the impugned judgment on various grounds touching the merit of the respective cases. It has been contended that the learned courts below have passed the impugned judgments in mechanical manner without appreciating the evidences in true perspective. In support of their contentions, learned counsel appearing on

behalf of both the petitioners have contended regarding the irregularities committed during investigation claiming acquittal of the petitioners from the charges levelled against them. All the factual pleas taken on behalf of both the petitioners would be elaborately dealt with in the latter part of the judgment. Mr. K.T.S. Tulsi, learned senior counsel appearing for P-2 has also contended that despite the fact that P-2 was discharging the constitutional duty as public representative being an MLA, Jharkhand Legislative Assembly during the relevant period, no sanction for prosecution under Section 197 Cr.P.C. was taken by the prosecution and, thus, the prosecution of P-2 gets vitiated in law.

9. On the contrary, Mr. Jay Prakash, learned Additional Advocate General, appearing on behalf of the State of Jharkhand has submitted that the matter regarding pollution was between the factory and the Jharkhand State Pollution Control Board in which P-2 being the member of the Committee of Legislative Assembly on Pollution Control had no role to play, requiring any sanction for prosecution under Section 197 Cr.P.C. It has further been submitted by the learned Additional Advocate General that the plea of P-2 that he raised the issue of pollution regarding Ramgarh Sponge Iron Factory before the Legislative Assembly does not connect the present offence with his official duty. In fact, the issue of pollution had already ended after the compliance of the direction issued by the Jharkhand State Pollution Control Board was made by the said factory by depositing the bank guarantee of Rs.5.00 lacs for taking precaution in the matter of pollution. Even after disposal of the case regarding pollution by the Jharkhand State Pollution Control Board, the petitioners demanded "Rangdari"/ committed extortion against P.Ws.5 and 8 with the threatening that non-payment of the same would lead to closure of the factory and they would be killed. It has also been submitted that the fact of the case clearly suggests that the said offence committed by the P-2 cannot be connected with his official duty. Moreover, D.W.1 has also not deposed that the alleged act of P-2 was in discharge of his official duty. Even during recording the statement of P-2 under Section 313 Cr.P.C., specific question was put to him by the learned Trial Court relating to the alleged offence, however, he did not make any statement that the alleged act was done by him in discharge of his official duty. The issue of sanction is a mixed question of law and fact, which is required to be established during trial. P-2 had ample opportunity during the trial to take the plea of sanction which he failed to do and, thus, the said issue cannot be raised at the revisional stage.

10. Mr. Pandey Neeraj Rai, learned counsel appearing on behalf of the intervener, while assisting the learned Additional Advocate General, has submitted that the issue of sanction for prosecution raised on behalf of P-2 should have been agitated during the trial itself. Though a defence witness was also examined, yet he did not disclose any fact that P-2 was implicated in this case while he was discharging his official duty.

11. It, thus, appears that the issue with regard to sanction for prosecution of P-2 was neither raised during the trial nor at the appellate stage and the said point

has been raised before this Court for the first time in revisional jurisdiction. Thus, it would be appropriate to go through the judgments cited by Mr. K. T. S. Tulsi, learned senior counsel appearing for P-2 to find out as to whether the issue of sanction for prosecution can be raised at this stage.

12. In the case of Matajog Dobey Vs. H. C. Bhari, reported in (1955)2 SCR 925, the Constitution Bench of the Hon'ble Supreme Court has held as under:

"20. Is the need for sanction to be considered as soon as the complaint is lodged and on the allegations therein contained? At first sight, it seems as though there is some support for this view in Hori Ram case [(1939) FCR 159, 178] and also in Sarjoo Prasad v. King-Emperor [(1945) FCR 227] . Sulaiman, J. says that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution. Varadachariar, J. also states that the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceeding. But a careful perusal of the later parts of their judgments shows that they did not intend to lay down any such proposition. Sulaiman, J. refers (at P-179) to the prosecution case as disclosed by the complaint or the police report and he winds up the discussion in these words: "Of course, if the case as put forward fails or the defence establishes that the act purported to be done is in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground". The other learned Judge also states at p. 185, "At this stage we have only to see whether the case alleged against the appellant or sought to be proved against him relates to acts done or purporting to be done by him in the execution of his duty". It must be so. 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."

Further in the case of B. Saha & Ors. Vs. M. S. Kochar, reported in (1979)4 SCC 177, the Hon'ble Supreme Court has held that the question of sanction for prosecution under Section 197 Cr.P.C. can be raised and considered at any stage of the proceedings. While considering the question as to whether the sanction for prosecution is required, it is not necessary for the Court to confine itself to the allegation made in the complaint, rather it can take into account all the materials available on record at the time when the said question falls for consideration.

In the case of Devinder Singh & Ors. Vs. State of Punjab, reported in (2016)12 SCC 87, the Hon'ble Supreme Court has held thus:

"39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. Protection of sanction is an assurance to an honest and sincere officer to

perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 Cr.P.C. has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 Cr.P.C. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 Cr.P.C., but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 Cr.P.C. would apply.

39.5. In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of court at a later stage, finding to that effect is permissible and such a plea can be taken first time before the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed.

39.7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.

39.9. In some cases it may not be possible to decide the question effectively and

finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial."

In the case of *Om Prakash & Ors. Vs. State of Jharkhand & Ors.*, reported in (2012)12 SCC 72, the Hon'ble Supreme Court has held that the question as to whether the sanction for prosecution is necessary or not is to be decided from stage to stage. The said question may arise at any stage of the proceeding. In a given case, it may arise at the very inception. There may be unassailable and unimpeachable circumstances on record establishing at the outset that the police officer or public servant was acting in performance of his official duty and was entitled to protection provided under Section 197 Cr.P.C.

In the case of *Prakash Singh Badal & Anr. Vs. State of Punjab & Ors.*, reported in (2007)1 SCC 1, it has been held by the Hon'ble Supreme Court that the question relating to the requirement of sanction under Section 197 Cr.P.C. is not necessarily to be considered as soon as the complaint is lodged on the basis of the allegations contained therein. The said question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage.

In the case of *Rama Dayal Markarha Vs. State of Madhya Pradesh*, reported in (1978)2 SCC 630, the Hon'ble Supreme Court while dealing with a case relating to the Contempt of Courts Act has held that the explanation appended to Section 3 of the said Act clearly shows that the proceeding either civil or criminal is deemed to continue to be pending until it is finally heard and decided i.e. to say in a case where a forum of appeal or revision is provided, until the appeal or revision is heard finally and decided or where no appeal or revision is preferred until the period of limitation prescribed for the same expires.

13. Thus, the issue as to whether the question of sanction can be raised at any stage of the proceeding is no more *res integra*. It is not necessary that the same should be raised at the very inception of lodging of the prosecution, rather it can be raised even at the appellate or revision stage. The said question may have to be determined from stage to stage. If it is found that there is unassailable and unimpeachable circumstances on record that the public servant was acting in discharge of his official duty, he is entitled to protection under Section 197 Cr.P.C.

14. Now, the question falls for consideration of this Court is as to whether the offence so alleged against P-2 falls under the premise of Section 197 Cr.P.C. so as to invoke the requirement of sanction before prosecuting him. To appreciate the said issue, the proposition laid down by the Hon'ble Apex Court in relation to the scope of applicability of Section 197 Cr.P.C. is required to be discussed.

15. In the case of *Matajog Dobey (Supra.)*, the Constitution Bench of the Hon'ble Supreme Court has held as under:

"17. 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 under Section 197, unless the act complained of is an offence; the only point to determine 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 merits. 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. In *Hori Barn Singh v. Crown* [(1939) FCR 159, 178] Sulaiman, J. observes:

"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 is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction."

The interpretation that found favour with Varadachariar, J. in the same case is stated by him in these terms at p. 187: "There must be something in the nature of the act complained of that attaches it to the official character of the person doing it". In affirming this view, the Judicial Committee of the Privy Council observe in *Gill case* [(1948) LR 75 IA 41] : "A public servant can only be said to act or 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 ... The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office". *Hori Ram case* [(1939) FCR 159, 178] is referred to with approval in the latter case of *Lieutenant Hector Thomas Huntley v. King-Emperor* [(1944) FCR 262] but the test laid down that it must be established that the act complained of was an official act appears to us unduly to narrow down the scope of the protection afforded by Section 197 of the Criminal Procedure Code as defined and understood in the earlier case. The decision in *Meads v. King* [(1948) LR 75 IA 185] does not carry us any further; it adopts the reasoning in *Gill's case* [(1948) LR 75 IA 41]."

In the case of *P.K. Pradhan Vs. State of Sikkim*, represented by the Central Bureau of Investigation, reported in (2001)6 SCC 704, the Hon'ble Supreme Court has held as under:

"5. The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to

have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and 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". 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 under Section 197, unless the act complained of is an offence; the only point for determination 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 merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation."

In the case of *State of Orissa & Ors. Vs. Ganesh Chandra Jew*, reported in (2004)8 SCC 40, the Hon'ble Supreme Court has held as under:

"7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection 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. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official

duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

8. At this juncture, we may refer to *P. Arulswami v. State of Madras* [AIR 1967 SC 776 : 1967 Cri LJ 665] wherein this Court held as under: (AIR p. 778, para 6)

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

Further in the case of *B. Saha* (Supra.), the Hon'ble Supreme Court at paragraph no.17 has held as under:

"17. The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. As

pointed out by Ramaswami, J., in *Baijnath v. State of M.P.* [AIR 1966 SC 220, 227 : (1966) 1 SCR 210 : 1966 Cri LJ 179] , "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."

Further in the case of *Sankaran Moitra Vs. Sadhna Das & Anr.*, reported in (2006)4 SCC 584, the Hon'ble Supreme Court has held as under:

"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. -----"

16. On consideration of the aforesaid judgments rendered by the Hon'ble supreme Court, the nature and scope of Section 197 Cr.P.C. may be summarized as under:

(i) There must be a reasonable connection between the act and the discharge of official duty. However, a pretended or fanciful claim may not be protected.

(ii) The offence alleged to have been committed must have something to do or must be related in some manner with the discharge of the official duty. No question of sanction would arise under Section 197 Cr.P.C. unless the act complained of is an offence. The only point for determination is whether it was committed in discharge of the official duty. There must be a reasonable connection between the act and the official duty.

(iii) The section has to be construed while determining its applicability to any act or omission in course of service, however, once any act or omission is found to have been committed by a public servant in discharge of his official duty, then it must be given liberal and wide construction so far its official nature is concerned.

(iv) The test to determine whether there is reasonable connection between the act done and the official duty is to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in affirmative, it may be said that such act was committed by the public servant while acting in discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant.

(v) The protection under Section 197 Cr.P.C. is available only when the alleged act done by the public servant is reasonably connected with the discharge of its official duty and not merely a cloak for doing the objectionable act. If in doing

the official duty by the public servant, he has 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.

(vi) The protection given under Section 197 Cr.P.C. is to protect responsible public servants against institution of possibly vexatious criminal proceedings for the offences alleged to have been committed by them while acting or purporting to act as public servant.

(vii) The word "any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty" employed in Section 197 Cr.P.C. would never be interpreted too narrowly nor too broadly rather the correct approach would be to give its meaning between these two extremes.

17. The learned senior counsel for the P-2 submits that P-2 has been implicated in the present case due to vengeance. It has been submitted that when P-2 was the member of the Committee of Legislative Assembly relating to pollution control, several complaints were received by him for violating the pollution norms by Ramgarh Sponger Iron Private Limited and as such he raised the said issue in the Jharkhand Legislative Assembly and by the orders of the Jharkhand State Pollution Control Board, the said factory was closed. However, subsequently, on furnishing of the bank guarantee of Rs.5.00 lacs, the order for closure of the factory was revoked with a further direction not to commit the said offence again. It has, thus, been contended that due to such action of P-2, which was in discharge of his official duty, the informant hatched a conspiracy with the owner of the factory and also the other employees to implicate the petitioners in the present case. Under the aforesaid circumstance, it was mandatory for the prosecution to seek sanction from the appropriate authority under Section 197 Cr.P.C. before proceeding with the case against P-2.

18. On the other hand, the case of the prosecution is that the petitioners were extorting Rs.5.00 lacs from the informant and the owner of the factory for which they threatened them to kill and also to close down the said factory.

19. In the case of Gill & Anr. Vs. The King, reported in (1948)75 IA 41, the Privy Council, while entertaining an appeal from the Federal Court of India, held as under:-

"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. Thus, a judge neither acts nor purports to act as a judge in receiving a bribe, though the judgment which he delivers may be such an act: nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office."

In the case of Choudhary Praveen Sultana Vs. State of West Bengal & Anr., reported in (2009)3 SCC 398, the Hon'ble Supreme Court has held as under:

"18. The direction which had been given by this Court, as far back as in 1971 in Bhagwan Prasad Srivastava case [(1970) 2 SCC 56: 1970 SCC (Cri) 292: (1971) 1 SCR 317] holds good even today. All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 Cr.P.C. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. As mentioned in Bhagwan Prasad Srivastava case [(1970) 2 SCC 56: 1970 SCC (Cri) 292 : (1971) 1 SCR 317] the underlying object of Section 197 Cr.P.C. is to enable the authorities to scrutinise the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 Cr.P.C. and have to be considered dehors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned."

Further in the case of Amal Kumar Jha Vs. State of Chhatisgarh, reported in (2016)6 SCC 734 (as cited by the learned Additional Advocate General), the Hon'ble Supreme Court has held as under:-

"8. *****

Use of the expression, "official duty" implies that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. In P. Arulswami v. State of Madras [P. Arulswami v. State of Madras, AIR 1967 SC 776 : 1967 Cri LJ 665 : (1967) 1 SCR 201] this Court after reviewing the authorities right from the days of Federal Court [Hori Ram Singh v. Crown, 1939 SCC OnLine FC 2 : (1939) 1 FCR 159] and Privy Council [Phanindra Chandra Neogy v. R., 1948 SCC OnLine PC 73 : (1948-49) 76 IA

10] , [Gill v. R., 1948 SCC OnLine PC 10 : (1947-48) 75 IA 41 : AIR 1948 PC 128] , [Albert West Meads v. R., 1948 SCC OnLine PC 37 : (1947-48) 75 IA 185 : AIR 1948 PC 156] held: (AIR p. 778, para 6)

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

concerned with his official duties so 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 Criminal Procedure Code 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.'

It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in *Matajog Dobey v. H.C. Bhari* [*Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44 : 1956 Cri LJ 140 : (1955) 2 SCR 925] thus: (AIR p. 49, paras 17 & 19)

'17. ... The offence alleged to have been committed [by the accused] must have something to do, or must be related in some manner, with the discharge of official duty.

19. ... There must be a [Ed.: The matter between two asterisks has been emphasised in *Budhikota Subbarao* case, (1993) 3 SCC 339.] reasonable connection [Ed.: The matter between two asterisks has been emphasised in *Budhikota Subbarao* case, (1993) 3 SCC 339.] between the act and the discharge of official duty; the [Ed.: The matter between two asterisks has been emphasised

in Budhikota Subbarao case, (1993) 3 SCC 339.] act must bear such relation to the duty that the accused could lay a reasonable [claim], but not a pretended or fanciful claim, that he did it in the course of the performance of his duty [Ed.: The matter between two asterisks has been emphasised in Budhikota Subbarao case, (1993) 3 SCC 339.] . '

If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed."

(emphasis supplied)

20. It would, thus, emerge that if from the nature of the act it is found that the same falls within the scope and ambit of official duty of any public servant, the protection contemplated under Section 197 Cr.P.C. is attracted. However, if the offence is found unconnected with the official duty, there should be no such protection. Any act done beyond the scope and ambit of the duty does not come in the purview of discharge of the official duty. Certainly, it is not within the scope of the duty of P-2 being an MLA to commit extortion by threatening the informant and the owner of the factory with dire consequences. Though the act done by using excessive force while discharge of the duty or in purported discharge of the duty, is not a good ground to deprive the public servant of such protection when there is a reasonable connection between the act and the performance of the official duty, yet in the facts of the present case, the alleged act of P-2 is completely foreign to the scope of his official duty. There is no connection between the scope of the duty of P-2 and the act alleged to have been done by him. By no stretch of imagination, P-2 could have asked for "Rangdari" (extortion) from the informant and, thus, he certainly misused his power which cannot attract the requirement of protection under Section 197 Cr.P.C.

21. I do not find any unassailable and unimpeachable evidence on record which suggests that the act alleged to have been done by P-2 was in discharge of his official duty or it was related in any manner with his official duty. There can be no dispute with the proposition that the purpose of providing protection under Section 197 Cr.P.C. is to protect an honest public servant from undue harassment in discharge of his official duty, however, at the same time the same protection cannot be given to a public servant who commits an offence totally foreign to the discharge of his official duty. In Gill's case (Supra.), specific illustration has been provided by the Privy Council for proper understanding as to what act may not be called to have been done "in discharge of official duty". It has been explained that when a Judge takes bribe for delivering a judgment, that act may not be treated in discharge of his official duty.

22. The learned senior counsel for the P-2 has further contended that the quantum of bank guarantee so ordered by the Jharkhand State Pollution Control

Board to be deposited by the factory is same to what was alleged to have been demanded by the petitioners and, thus, the said fact also shows that the said offence alleged to have been committed by P-2 was in discharge of his official duty.

23. For better appreciation of the said argument advanced by the learned senior counsel for P-2, I have also perused the records of the case. On 8th March, 2011, P-2 had raised the issue of violation of pollution norms by the factory before the Jharkhand Legislative Assembly and, thereafter, the Jharkhand State Pollution Control Board took up the matter and a direction for closure of the factory was issued on 29.3.2011 in terms with Section 31(A) of the Air (Prevention & Control of Pollution) Act, 1981. However, on deposit of the bank guarantee of Rs.5.00 lacs by the factory for taking further precaution, the earlier order issued for closure of the factory was revoked by the Jharkhand State Pollution Control Board vide order dated 30th April, 2011 and the said issue came to an end.

So far as the Commission of extortion is concerned, the prosecution witnesses have consistently deposed that the extortion amount was demanded from the informant and the owner of the factory with threatening to kill them and to close down the factory. It has come in the evidence that Rs.1.00 lac was given to P-2 on 2.4.2011. However, the petitioners continued to extort money and thereafter, the alleged occurrence dated 25th August, 2011 took place at the factory gate.

24. In view of the aforesaid facts, it transpires that even after the matter relating to violation of pollution norms by the factory came to an end on 30th April, 2011, the petitioners continued to make the extortion from the informant and the owner of the factory giving rise to the alleged occurrence dated 25th August, 2011. Thus, on the said factual premise also, it cannot be said that the alleged occurrence dated 25th August, 2011 had any connection with the discharge of the official duty of P-2. Therefore, I do not find any substance in contentions of the learned senior counsel for the P-2 that the prosecution should have sought sanction for prosecution of P-2 in terms with Section 197 Cr.P.C.

25. Now, the question arises as to whether the case of the petitioners has any merit warranting interference with the impugned judgments passed by the Trial Court and the Appellate Court under the revisional jurisdiction.

26. The learned senior counsel for the P-2 and the counsel for the P-1 have submitted that the Trial Court passed the impugned judgment of conviction and order of sentence in a mechanical manner without appreciating the evidence available on record. The Appellate Court also erroneously affirmed the judgment of conviction and order of sentence without appreciating the materials available on record in true perspective. The petitioners have been implicated in the present case only on account of vengeance, as P-2 being the Member of the Committee of Legislative Assembly on Pollution Control had raised the issue of violation of pollution norms by the factory of P.W.8 due to which the Jharkhand

State Pollution Control Board took the action. It has also been submitted that there was an undue delay in sending the first information report to the Magistrate which makes the prosecution case doubtful. All the witnesses examined in the present case are highly interested, being the owner, manager, liaising officer and other employees of the factory. The courts below have miserably failed to consider the evidence of the defence witness as well as the documentary evidence, which clearly indicate the manner in which the petitioners have been falsely implicated in the present case. The informant (P.W.5) has admitted in his evidence that he had never talked to the P-2 in his physical presence. The courts below have also miserably failed to appreciate that the alleged mobile phones, which were used for demanding extortion, did not belong to the petitioners. There is no evidence to suggest that the petitioners put the informant in fear of any injury or of grievous hurt in order to commit extortion. There is an error of omission in framing of charge, as there is non-mentioning of some relevant facts in the same. As per the charge, the petitioners were tried for the alleged occurrence dated 25.8.2011, whereas the prosecution witnesses have deposed that prior to the said date, the accused persons were demanding extortion and Rs.1.00 lac was given to P-2 in order to meet their demand. Though the entire case of the prosecution is based on mobile conversation, yet no alleged mobile phones or sim was seized by the Investigating Officer.

27. On this, Mr. Jay Prakash, learned Additional Advocate General, submits that both the courts below have given concurrent finding of fact after appreciating each and every point raised by the parties. The petitioners have, however, failed to show any illegality of infirmity in the impugned judgments of the learned courts below and, thus, there is no good ground to reverse the findings of the courts below under the revisional jurisdiction. It is also submitted by the learned Additional Advocate General that even if there is any procedural lapses on the part of the prosecution, the alleged offence has sufficiently been proved by the prosecution. The prosecution witnesses have consistently deposed the fact of alleged demand of Rangdari (extortion) and the defence has not been able to draw any major contradiction in their cross-examination.

28. Before appreciating the argument of learned counsel for the parties, it would be relevant to go through the extent and scope of the revisional jurisdiction of this Court.

In the case of Sheonandan Paswan Vs. state of Bihar & Ors. reported in (1987)1 SCC 288, the Hon'ble Supreme Court has held as under:

"88. There is no appeal provided by the Act against an order giving consent under Section 321. But the order is revisable under Section 397 of the Criminal Procedure Code. Section 397 gives the High Court or the Sessions Judge jurisdiction to consider the correctness, legality or propriety of any finding, sentence or order and as to the regularity of the proceedings of any inferior court. While considering the legality, propriety or the correctness of a finding or a

conclusion, normally, the revising court does not dwell at length upon the facts and evidence of the case. The court in revision considers the materials only to satisfy itself about the correctness, legality and propriety of the findings, sentence or order and refrains from substituting its own conclusion on an elaborate consideration of evidence."

29. Coming back to the present case, P.W.1 is the Investigating Officer, who recorded the statement of the informant. P.W.1 has proved the endorsement made by Madan Mohan Singh, Officer-in-charge of the police station for lodging the first information report, which is marked as Ext.1. He has further proved the formal first information report, which is marked as Ext.2. P.W.2 is the second Investigating Officer, who has proved the charge sheet, marked as Ext.3. The present first information report has been lodged on the basis of the written report of P.W.5, who alleged that on 25th August, 2011 at about 2:00 p.m., P-1 came to the factory gate of Ramgarh Sponge Iron Private Limited, Hosir and called him. On coming there, the informant was threatened by P-1 as to why the demanded amount of Rs.5.00 lacs was not sent to P-2. Thereafter, P-1 contacted P-2 on his mobile phone and handed over the same to the informant and, thereupon P-2 threatened him that if the owner of the factory does not send Rs.5.00 lacs, he will get the said factory closed. It has further been alleged that earlier also the petitioners had demanded money on mobile phone and had threatened to kill him and the owner of the factory. The informant proved the written report as Ext.4. P.W.6 deposed that on the date of occurrence, at the relevant point of time, he was performing the duty of guard at the gate of the factory. At that time, a person came to the gate and disclosed his name as Randhir Gupta, who asked for the informant, and, thereafter, P.W.6 informed the said fact to the informant. He further deposed that after talking to P-1 the informant was looking afraid. He also deposed that P-1 was demanding Rangdari (extortion). P.W.7 is the Liaisoning Officer in the factory, who deposed that the petitioners were demanding Rangdari from the informant and the owner of the factory, namely, Mahavir Prasad Rungta, who used to live in Delhi. He further deposed that the informant had given Rs.1.00 lac to P-2 through P-1, however, they continued demanding more money. Thereafter, P.W.7 went to Ramgarh Gymkhana Club with Mahavir Prasad Rungta (P.W.8) and gave Rs.1.00 lac to P-2, who was accompanied by P-1. The said witness also deposed that the petitioners demanded further Rangdari (extortion) from the informant for which the present case has been lodged. During cross-examination also, the said witness deposed that Rs.1.00 lac was given in his presence. P.W.8, who is the owner of the factory has supported the allegation made in the first information report and has deposed that the petitioners had called him in Jharkhand Bhawan at New Delhi, however, he did not go there. The petitioners threatened him to kill and to close down his factory. The said witness also deposed that he gave Rs.1.00 lac to P-2 through the informant. However, the petitioners continued to demand Rs.5.00 lacs due to which he came to Ramgarh with P.W.7 and met the petitioners at Gymkhana Club, Ramgarh on 2nd April, 2011. He further deposed that on the

said date there was a world cup match. He ordered the caretaker of the said club, namely, Nand Kishore for food. It has also been deposed that he gave Rs.1.00 lac to P-2, however, he was pressurized to give Rs.5.00 lacs. The said witness has further deposed that P.W.3 had given him food bill, which was paid by him. The said food bill was also signed by him. P.W.3- Nand Kishore Mahto also supported the deposition of P.Ws.7 and 8. He disclosed that on 2nd April, 2011, P.Ws.6 and 7 had come to Gymkhana Club, Ramgarh along with the petitioners. They had taken dinner there. He heard that they were talking about money. The said witness proved the carbon copy of the receipt relating to service of food, which have been marked as Exts. Y, Y/1 and Y/2, however, he was declared hostile on the point of identification. P.W.9 deposed that at the relevant time, he was in the additional charge of System Administrator at S.P. Office. He proved the CDR of Mobile No.9386613800, which has been marked as Ext.6.

The only witness appearing on behalf of the defence, namely, Radheshyam Sahu (D.W.1) deposed that a "Dharna" was organized on 3rd May, 2010 at the factory gate by him, however, the management ordered its staff to chase and oust the protesters and they were beaten up. He had lodged the first information report, being Giddi P.S. Case no.46 of 2010, and the management of the factory put pressure upon him to withdraw the said case and when it was not done, the present false case has been filed.

30. It would, thus, appear that P.W.5, who is informant of the case, has supported the allegation made in the first information report. He further disclosed that P.W.6, who was guard of the factory, had informed him that P-1 was calling him at the factory gate. P.W.6 has also deposed that on the date of occurrence, he was on duty at the factory gate and had informed P.W.5 about the arrival of P-1. Though the said witness was declared hostile by the prosecution on the point of identification of P-1, yet rest part of his evidence cannot be disbelieved. Though the informant during his evidence further added that he gave Rs.1.00 lac to P-1 at the factory gate, which was not disclosed at the time of lodging of the first information, yet considering the fact that P.Ws.7 and 8 have duly supported the factum of giving Rs.1.00 lac to the petitioners at Gymkhana Club, Ramgarh, his testimony cannot be disbelieved in totality. P.Ws.7 and 8 have also consistently deposed that the petitioners were committing extortion and were threatening P.W.8 that non-payment of the same would lead to closure of the factory and they would also be killed. P.Ws.7 and 8 have narrated the occurrence taking place at Ramgarh Gymkhana Club where they had a talk with the petitioners and also gave Rs.1.00 lac to them. P.W.3- caretaker of the said club has also supported the factum of their arrival at the club and has also stated that he heard them talking about money. The mere fact that there was some enmity between the petitioners and the informant does not by itself vitiate the prosecution case. Each case is to be decided on its peculiar facts. Even if it is assumed that any other case against some of the prosecution witnesses is pending, the same would be decided on the basis of the evidence led in that case.

31. The learned senior counsel appearing for the P-2 has also contended that CDR of mobile phone from which the alleged offence of extortion was made has not been proved by the prosecution and as such the petitioners are entitled to be acquitted of the charges. In support of the said contention, reliance has been placed on the judgment of the Hon'ble Supreme Court rendered in the case of Prashant Bharti Vs. State (NCT of Delhi), reported in (2013)9 SCC 293, wherein it was found through the CDR of the mobile phones that neither the appellant nor the complainant was present at the place of occurrence and as such the proof of that fact was held to be conclusive for all intents and purposes. Learned senior counsel has further put reliance on the judgment of Tripura High Court rendered in the case Sri Satyendra Nath Vs. Smti Kadambini Debnath, reported in 2015 SCC Online Tri 600, wherein it has been held that documentary evidence has to prevail over the oral evidence. If a fact is proved by the documentary evidence, the Court of law is not required to elaborately discuss the oral evidence.

32. However, the facts of the present case is entirely different from the cases cited by Mr. Tulsi, learned senior counsel for the P-2. It is not the case of the petitioners that there was electronic evidence in form of CDR of mobile phone which disproves the case of the prosecution, rather in the present case, the informant in his written report has specifically claimed that prior to the occurrence dated 25th August, 2011, the petitioners were talking to him on his mobile No.9386613800 through three different mobile numbers i.e. 9431501558, 9131819971 & 9431168642. The informant has further supported the version of the first information report during his evidence in Court. The CDR of mobile No.9386613800 was also produced before the Court and the was proved by P.W.9, who asserted that the calls were made from mobile nos.9631819971 and 9431501558 on mobile no.9386613800 belonging to the informant, which corroborates the claim of the informant that the phone calls were made to him from those mobile numbers. The version of extortion by the petitioners at Gymkhana Club on 2nd April, 2011 has also been supported by the prosecution witnesses. The occurrence dated 25th August, 2011 too has been supported by the prosecution witnesses. Though the CDR of the mobile phone number of P-1 was not proved by the prosecution in relation to the occurrence dated 25th August, 2011, yet if such defect in the investigation is noticed by the Court it has to be circumspect in evaluating the evidence, however, it would not be appropriate to acquit an accused solely on the ground of that defect, as the same would tantamount to playing the hands of the Investigating Officer, if the investigation is designedly defective. The said ratio has been laid down by the Hon'ble Apex Court in the case of Karnel Singh Vs. State of Madhya Pradesh, reported in (1995)5 SCC 518.

33. Relying on the said ratio it can be held that mere fact that the CDR of mobile phone of P-1 was not proved by the prosecution, will not be a good ground to brush aside the entire case of the prosecution, if otherwise the rest evidence fully supports the case of the prosecution.

34. So far as the contention raised on behalf of the petitioners that the delay caused in forwarding the first information report to the Magistrate creates a doubt on the prosecution case, it would be appropriate to go through the law laid down by the Hon'ble Apex Court in the case of *Bimla Devi Vs. Rajesh Singh & Anr.*, reported in (2016)15 SCC 448, wherein it has been held as under:-

"9. The above two arguments were also pleaded before the trial court as well as the High Court, and both the courts below denied the averments and reasoned that the two errors did not prejudice the investigation. Moreover, the prosecution case was supported by six strong and cogent eyewitnesses, which was further corroborated by the medical evidence and the recovery memos. The High Court perused the testimony of PW 9, who is the investigating officer, wherein it was deposed that he recorded the statement (fardbeyan) at 4.30 p.m., thereafter he went to the place of incident and the body of deceased Kashi Nath Tiwary was recovered from the well after one hour of his arrival, and the inquest and other proceedings were conducted. Hence, he stated that the FIR was lodged at about 9.00 p.m. The witness further stated that the FIR was sent to the Magistrate through Special Messenger on 22-12-1998. Although it is true that delay in sending the FIR to the Magistrate can vitiate the investigation, but it is settled position that a cogent reasoning can override this procedural lacunae. It is an accepted fact that there was a delay of one day in sending the FIR. However, no motive in manipulating with the FIR was proved. The prosecution case is strongly backed by testimonies of the six eyewitnesses who have testified the incident in almost similar terms. A procedural lapse in not sending the FIR promptly, did not prejudice the present case."

35. It would, thus, emerge that the procedural lapse in not sending the first information report promptly will not always be fatal to the case of the prosecution. If the prosecution case is otherwise consistent and no motive is proved regarding manipulation of the first information report, the same cannot be taken as a good ground to brush aside the entire prosecution case.

36. So far as the contention made on behalf of the petitioners that all the witnesses examined by the prosecution are highly interested and as such their testimony cannot be relied upon for convicting the petitioners alone is concerned, it transpires that the petitioners have not been able to show any major contradiction and inconsistency in their evidence before the courts below, rather their oral evidence is also supported by the documentary evidence, as would be evident from the fact that P.W.3 has proved the carbon copy of the receipt of food bills dated 2nd April, 2011, marked as Exts. Y, Y/1 and Y/2.

37. In view of the aforesaid discussions, I see no reason to interfere with the impugned common judgment dated 1st April, 2017 passed by the Additional Sessions Judge-II, Hazaribagh in Cr. Appeal Nos.17 of 2015 and 24 of 2015 as well as the judgment of conviction and order of sentence dated 28th January, 2015 passed by the Trial Court in connection with G.R. No.2303 of 2011.

38. The present revision petitions being devoid of merit are, accordingly, dismissed.