2024 INSC 843

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 4314-4316 OF 2024

Directorate of Enforcement ...Appellant

versus

Bibhu Prasad Acharya, etc. ...Respondents

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECT

1. The appellant has filed complaints against the respondents and others under Section 44(1)(b) of the Prevention of Money Laundering Act, 2002 (for short, 'the PMLA'). The complaint is for an offence under Section 3 of the PMLA, which is punishable under Section 4. Both private respondents are accused in the complaints. They are Bibhu Prasad Acharya (described hereafter as the first respondent) and Adityanath Das (described hereafter as the second respondent). The Special Court took cognizance

Signature Not Verified
Digitally signed by ASHISH KOHLE
Date: 2024.11.06 18:09:04 IST
Reason:

of the complaints and issued summons to the respondents and other accused persons. Both of them filed writ petitions before the High Court challenging the cognizance taken by the Trial Court and inter alia prayed for quashing the complaints on the ground that both of them were public servants and, therefore, it was necessary to obtain prior sanction under sub-section (1) of Section 197 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC'). By the impugned judgment, the High Court upheld the respondents' contentions and quashed the orders of taking cognizance passed by the Special Court on the complaints only as against the said respondents.

SUBMISSIONS

2. Shri S.V. Raju, learned Additional Solicitor General for India, appeared for the appellant-Enforcement Directorate. He submitted that in view of Section 71 of the PMLA, the provisions thereof have an overriding effect over the provisions of the other statutes, including the CrPC. He submitted that considering the object of the PMLA, the requirement of obtaining a sanction under Section 197(1) of CrPC will be inconsistent with the provisions of the PMLA.

3. He pointed out from the assertions made in the complaints that at the relevant time, the first respondent was the Vice Chairman and Managing Director of Andhra

Pradesh Industrial Infrastructure Corporation Ltd. (for short, 'the Corporation'). His submission is that he was not a public servant within the meaning of Section 197(1) of CrPC, as it cannot be said that while holding the said position, he was not removable from the office save by or with the sanction of the Government. He relied upon the decisions of this Court in the case of ***S.S. Dhanoa v. Municipal Corporation Delhi and Others***[1] and ***Mohd. Hadi Raja v. State of Bihar and Another***[2]. He submitted that the first respondent was not employed in connection with the affairs of the State Government at the time of the commission of the offence. He submitted that officers of such Corporations are not public servants within the meaning of Section 197(1). He also relied upon a decision of this Court in the case of ***Prakash Singh Badal and Another v. State of Punjab and others***[3]. He submitted that the issue of the requirement of sanction will have to be decided at the time of the trial. He submitted that the respondents' act of money laundering cannot be considered to have been done in the discharge of their official duties.

4. Mrs Kiran Suri, learned senior counsel appearing for the respondents accused, invited our attention to the

[1] (1981) 3 SCC 431
[2] (1998) 5 SCC 91
[3] (2007) 1 SCC 1

Memorandum and Articles of the Association (for short, "the Memorandum") of the said Corporation and, in particular, Clauses 70 and 71 (b) thereof and submitted that power to appoint a Director of the Corporation and power to remove him vested in the State Government. Therefore, the first respondent continued to be a public servant as contemplated by Section 197(1) of CrPC. She submitted that the plea of absence of sanction can be raised at any stage of the proceedings, and it is not necessary to wait till the final hearing of the complaint.

CONSIDERATION OF SUBMISSIONS

5. Section 197 (1) of CrPC (which corresponds to Section 218 of Bhartiya Nagrik Suraksha Sanhita, 2023) reads thus:

> **"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:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

[Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376 [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB] or section 509 of the Indian Penal Code (45 of 1860).]

6. The object of Section 197(1) must be considered here. The object is to protect the public servants from prosecutions. It ensures that the public servants are not prosecuted for anything they do in the discharge of their duties. This provision is for the protection of honest and sincere officers. However, the protection is not unqualified. They can be prosecuted with a previous sanction from the appropriate government.

7. The expression "to have been committed by him while acting or purporting to act in the discharge of his official duty" has been judicially interpreted. A bench of three Hon'ble Judges of this Court in the case of ***Centre for Public Interest Litigation v. Union of India***[4], in paragraph no 9, observed thus:

> "9……. **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 from the protection.** The question is not as to the nature of the offence such as whether the alleged

[4] (2005) 8 SCC 202

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."
>
> *(emphasis added)*

8. In the decision of this Court in the case of ***Prakash Singh Badal and Another***[3], in paragraph 38, this Court held thus:

> "38. **The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This 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."
>
> *(emphasis added)*

In the present case, after completing the investigation, the appellant has filed exhaustive complaints under Section 44(1)(b) of the PMLA. Cognizance has been taken based on the complaints. Therefore, the issue of the absence of sanction will arise at this stage.

9. The second respondent was at the relevant time holding the post of Principal Secretary, I&CAD Department of the Government of Andhra Pradesh. It is not disputed

that even the first respondent was a civil servant but was appointed on deputation as the Corporation's Vice Chairman and Managing Director during the relevant period. It is undisputed that as far as the second respondent is concerned, he was removable from his office by or with the sanction of the Government.

10. As far as the first respondent is concerned, we find from clause 71 (a) of the Memorandum that the power to appoint Directors of the Corporation by nomination is vested in the Government of the erstwhile State of Andhra Pradesh. Under Clause 81 of the Memorandum, the State Government was empowered to appoint any of the Corporation's Directors to be the Corporation's Managing Director. Thus, the appointment of the first respondent as a Director and subsequently as the Managing Director has been made by the State Government. Sub-clause (b) of Clause 71 of the Memorandum provides that the Government shall have the power to remove any Director, including the Chairman, Vice Chairman and Managing Director. Therefore, at the relevant time, the State Government had the power to remove the first respondent from the post of Vice Chairman and Managing Director of the Corporation.

11. There are two conditions for applicability of Section 197(1). The first condition is that the accused must be a

public servant removable from his office by or with the government's sanction. The second condition is that the offence alleged to have been committed by the public servant while acting or purporting to act in the discharge of his duty.

12. We have perused the decisions relied upon by learned ASG. In the case of ***Mohd. Hadi Raja***[2], this Court took the view that the protection of Section 197 of CrPC will not be available to the officer of the Government Companies or Public Sector Undertakings. The first respondent is a civil servant. As such, the State Government appointed him as the Corporation's Vice Chairman and Managing Director on deputation. Therefore, the decision in the abovementioned case will not apply to the first respondent.

13. The first condition is satisfied in the case of both the respondents as they are civil servants. The allegation in the complaint against the first respondent is that he, in conspiracy and connivance with Shri Y.S. Jagan Mohan Reddy (the then Chief Minister of the state), another accused, allotted 250 acres of land for the SEZ project to M/s. Indu Tech Zone Private Ltd. by violating the existing norms, regulations and procedures. Further allegation against the first respondent is that he was indirectly involved in the offence of money laundering by knowingly assisting M/s. Indu group of companies in the creation of

vast proceeds of crime. The allegation against the second respondent, who was at the relevant time Principal Secretary, I & CAD Department of the State Government, is that in conspiracy with Shri Y.S.Jagan Mohan Reddy, he extended favour to India Cement Limited by allotting an additional 10 lakh litres of water from River Kagna without referring the matter to Interstate Water Resources Authority and by violating the existing norms, regulations and procedures.

14. A Bench of three Hon'ble Judges of this Court in the case of ***P.K. Pradhan v. State of Sikkim***[5], in paragraphs 5 and 15 held thus:

> **"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

[5] (2001) 6 SCC 704

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"**

"15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is

reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. **It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a**

> **reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."**
>
> *(emphasis added)*

Thus, there is no embargo on considering the plea of absence of sanction, after cognizance is taken by the Special Court of the offences punishable under Section 4 of the PMLA. In this case, it is not necessary to postpone the consideration of the issue.

15. We have carefully perused the allegations against the respondents in the complaint. The allegation against the second respondent is of allocating an additional 10 lakh litres of water to India Cement Ltd. Taking the averments made in the complaint against him as it is, the act alleged against him has been committed by him while purporting to act in the discharge of his official duties. The allegation against the first respondent is of the allotment of land measuring 250 acres to M/s. Indu Tech Zone Private Ltd. Taking the averments made in the complaint as correct, the act alleged against him has been done by him purporting to act in the discharge of his official duties. In

the case of both respondents, the acts alleged against them are related to the discharge of the duties entrusted to them. It is not even the allegation in the complaints that the two respondents were not empowered to do the acts they have done. There is a connection between their duties and the acts complained of. The second condition for the applicability of Section 197(1) also stands satisfied, and therefore, in this case, Section 197(1) of CrPC applies to the respondents, assuming that Section 197(1) of CrPC applies to the proceedings under the PMLA.

16. As far as the applicability of Section 197 of CrPC to the PMLA is concerned, there are two relevant provisions in the form of Section 65 and 71 of the PMLA which read thus:

> **"65. Code of Criminal Procedure, 1973 to apply.--** The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act."
>
> **"71. Act to have overriding effect.--** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

17. Section 65 makes the provisions of the CrPC applicable to all proceedings under the PMLA, provided the same are not inconsistent with the provisions contained in the PMLA. The words 'All other proceedings' include a complaint under Section 44 (1)(b) of the PMLA. We have carefully perused the provisions of the PMLA. We do not find that there is any provision therein which is inconsistent with the provisions of Section 197(1) of CrPC. Considering the object of Section 197(1) of the CrPC, its applicability cannot be excluded unless there is any provision in the PMLA which is inconsistent with Section 197(1). No such provision has been pointed out to us. Therefore, we hold that the provisions of Section 197(1) of CrPC are applicable to a complaint under Section 44(1)(b) of the PMLA.

18. Section 71 gives an overriding effect to the provisions of the PMLA notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 65 is a prior section which specifically makes the provisions of the CrPC applicable to PMLA, subject to the condition that only those provisions of the CrPC will apply which are not inconsistent with the provisions of the PMLA. Therefore, when a particular provision of CrPC applies to proceedings under the PMLA by virtue of Section 65 of the PMLA, Section 71 (1) cannot override the provision of CrPC which applies to the PMLA. Once we

hold that in view of Section 65 of the PMLA, Section 197(1) will apply to the provisions of the PMLA, Section 71 cannot be invoked to say that the provision of Section 197(1) of CrPC will not apply to the PMLA. A provision of Cr. P.C., made applicable to the PMLA by Section 65, will not be overridden by Section 71. Those provisions of CrPC which apply to the PMLA by virtue of Section 65 will continue to apply to the PMLA, notwithstanding Section 71. If Section 71 is held applicable to such provisions of the CrPC, which apply to the PMLA by virtue of Section 65, such interpretation will render Section 65 otiose. No law can be interpreted in a manner which will render any of its provisions redundant.

19. In this case, the cognizance of the offence under Section 3, punishable under Section 4 of the PMLA, has been taken against the respondents accused without obtaining previous sanction under Section 197(1) of CrPC. Therefore, the view taken by the High Court is correct. We must clarify that the effect of the impugned judgment is that the orders of the Special Court taking cognizance only as against the accused B.P.Acharya and Adityanath Das stand set aside. The order of cognizance against the other accused will remain unaffected. However, it will be open for the appellant to move the Special Court to take cognizance of the offence against the two respondents if a sanction under Section 197(1) of CrPC is granted in future.

This liberty will be subject to legal and factual objections available to the respondents. Hence, the appeals must fail and are dismissed subject to what is observed above.

.....J.
(Abhay S. Oka)

.....J.
(Augustine George Masih)

New Delhi;
November 06, 2024