SUPREME COURT OF INDIA

State of Madhya Pradesh

Vs.

Sheetla Sahai & Ors.

Crl.A.No.1417 of 2009

(S.B. Sinhaand and Cyriac Joseph, JJ.)

04.08.2009

JUDGEMENT

S.B. Slnha, J.

1. Leave granted. The appellant is before us being aggrieved by and dissatisfied with a judgment and order dated 12-1-2006 passed by a learned Single Judge of the Madhya Pradesh High Court allowing the criminal revision applications filed by the respondents herein arising out of the orders dated 21-12-1998 and 13-5-1997 passed by the Special Judge, Bhopal in Special Case No. 6 of 1997. The respondents herein were proceeded against for commission of offences under Sections I3(l)(d)(ii)-(iii) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short "the Act") and Section 120-B of the Penal Code, 1860.

2. Before proceeding further, we may notice the positions held by the respondents herein. Respondent 1, Sheetla Sahai was the Minister for Water Resources of the State of Madhya Pradesh. Respondent 2, D.V.S.R. Sarma and Respondent 7, S.W. Mohgoankar were the Secretaries to the Government of Madhya Pradesh. Respondent 3, P.V. Srinivasaiyah was the Engineer-in- Chief and Respondent 4, A.S. Laxminarsimhaiya was the Deputy Secretary in the Government of Madhya Pradesh. Respondent 5, V.R.B. Gopal and Respondent 6, M.N. Nadkami were the Chief Engineers, Hasdeo Bango Project. Respondent 11, R.P. Khare was the Secretary, Control Board for Major Projects.

3. The appellant under the aegis of World Bank undertook construction of Hasdeo Bango Masonry Dam Project. For the aforementioned purpose, Respondents 8, 9 and 10 herein viz. M/s Progressive Constructions (P) Ltd., M/s Prasad & Company, M/s SEW Construction Co. (hereinafter referred to as "the contractors") were awarded contracts in terms whereof they were required to excavate stones, etc. from Therma Pahar Quarry, which was situate at only

12 km away from the site, for use of the stone to be extracted therefrom for construction of masonry spillway. One of the terms of the said contract is as under:

> "... The tenderer should satisfy himself regarding availability of the required quality and quantity of the materials; if any quarry is changed for any reason whatsoever, no claim shall be entertained on this account."

4. In addition to the guidelines, a plan was also supplied to the contractors containing the following note:

> "The contractor shall extract materials from the approved sources and quarry areas to be designated by the Engineer-in-Charge for their particular contract group. They shall have no claim for any material collected elsewhere without having obtained the prior approval in writing of the Engineer-in-Charge. Such material shall become the property of the Department unless approval to use the same is subsequently accorded by the Engineer-in-Charge, in which case, however, the contractor shall not be entitled for any extra rate or lead."

5. However, on the premise that whereas eight lakh cubic metres of stones of the requisite specification were required for masonry work, only one lakh cubic metre stone was available from Therma Pahar Quarry, permission was sought for by the contractors to excavate stones, rubble and other materials from a quarry known as Katghora Quarry which was situated at a distance of 22 km from the dam. The question was considered by the Engineers concerned. The District Mining Officer and the Additional Collector, Korba, having regard to the fact that the mining leases in respect of the said quarries were to be granted, asked them not to do so as the stones in the hillocks of Villages Katghora, Hukra and Maheshpur were found to be suitable for the masonry work of the dam, as would appear from a letter dated 14-7-1983 issued by the Executive Engineer to the Additional Collector, Korba.

6. The Superintending Engineer, Respondent 7 herein also by his letter dated 28-7-1983 addressed to Shri R.C. Gupta, the then Executive Engineer stated:

> "I am informed that Rampura Quarry near Katghora on Katghora- Ambikapur Road, may also yield good masonry stones. You may also explore this possibility and let me know if the stones were got tested. If not, the samples from this quarry may also be tested. Case could also be moved to obtain lease for this quarry."

7.. A request was also made to the Mining Officer of Bilaspur to the same effect by Shri R.C. Gupta, the then Executive Engineer by a letter dated 16-10-1983, stating:

"... Adequate quantity of rubble is not available from Therma Quarries of the Forest Department acquired for this purpose and the Geologist, Geological Survey of India had intimated that about one lakh cu m of rubble can only be extracted from Therma Quarries.

For completion of this major dam about ten lakh cu m rubble and metal are a needed. Out of which one lakh cu m can be extracted from Therma Quarry, about three lakh cu m can be used out of the stone received from excavation of foundation of dam, remaining 6 (six) lakh cu m is required from adjacent stone quarries like Katghora, Hukra and Maheshpur. Hence, I have requested in my letter cited above (copy enclosed) to the Additional Collector, Korba, to reserve rubble quarries in the £, surroundings of the above villages so that rubble from these quarries can be extracted for completion of Bango Dam in time. Now I understand that you have proposed the above quarries for auction on 20-10-1983 and 21-10-1983. I request to delete the rubble quarries situated in the surrounding of Katghora, Hukra and Maheshpur from the purview of auction and transfer to the Irrigation Department. c Depending upon the quantity of rubble required by each agency executed masonry works at Bango Dam, allotment of individual quarries will be made by us after the agencies deposit the royalty charges which will be refundable to them after awarding the certificate of utilising the material in bona fide government works. Till the formalities are over for transfer of the above quarries to the ^ Irrigation Department, I request to delete the following quarries from the purview of auction.

"Si No. Name of village PC No. Name of material Khasra No. Area

1. Hukra 47 Stone 347/1 17.396 ha
2. Maheshpur 31-A Stone 1/1-K 30.425"

The Additional Collector (Mining Section), Korba in response thereto by a letter dated 22-11-1983 addressed to the Executive Engineer reserved the aforementioned quarries for extraction of stones departmentally, subject to the conditions mentioned therein.

8. Yet again, the Executive Engineer by a letter dated 5-12-1984 addressed to the Superintending Engineer brought to his notice that ^ alternative sites for quarrying operations for extraction of stones were necessary, inter alia, stating:

> "2. The quarrying operations for extraction of stones were started in the real sense during 1982-1983 working season i.e. prior to the area was ready for starting the masonry. The contractors after the start of quarry operations repeatedly wrote regarding the non-availability of sufficient 3 stones of requisite quality. They had also brought out that the yield of even this small quantity of stone was very much less. In consultation with the Department and the resident geologist, they have opened more number of quarry faces, but this did not yield results. This office has also carried out case studies which had established the yield of useful stone to be very much less. The details are enclosed at Annexure A. Even the ^ quantum of stone available is less, when compared to the requirement.

> 3. It was reported that the quantum of useful rubble available in the entire Therma Pahad hills is to the tune of one lakh cu m against the total requirement of eight lakh cu m for the entire dam. This was based on the detailed investigations and report of the Resident Geologist. Even this quantity can be extracted with much difficulty. Therma Pahad Quarry on the visual appearance and the random bore holes, initially appeared to be good. As such this was declared as quarry for masonry stone and accordingly estimates prepared and designated as the specified quarry in the quarry map enclosed along with the agreements. The contractors naturally could not have investigated the quarry by actual opening/operation, and have inspected the quarry with the data available to them. Therefore neither the Department nor the contractor could have foreseen the non-availability of useful stone in the required quantity from the designated quarry."
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> It was requested:
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> "It is therefore requested that the sanction may be obtained for payment of additional leads and communicated. However, the payment towards additional wasteful expenditure incurred on Therma Quarries as claimed by contractors is recommended for rejection."

9. The Superintending Engineer brought the same to the notice of the Chief Engineer by a letter dated 18-12-1984 stating that there had always been a controversy regarding the use of those stones as rubble in masonry dam. A question was also raised as to whether the Department would permit additional payment due to change in the quarry. If such a step is not taken, the contractor may put an end to the contract and, thus, inter alia requested that payment of additional leads from Katghora Quarry may be allowed. It appears that even the Central Water Commission of the Government of India by a letter dated 4-5-1984 informed the Chief Engineer of the project to the following effect:

> "Please refer to your letter on the abovementioned subject. You have proposed to use stone from Therma Pahar Quarry for the construction of the dam. Though the stone from this quarry has been approved as granite, the compressive strength of the stone from this quarry varies from 289 kg/cm to 373 kg/cm, which is very low. It is necessary that the reasons for such low strength for the granite are investigated before deciding to use the same for the construction of the dam."

10. By a letter dated 7-6-1983, the Executive Engineer of the Quality Control Division brought the following to the notice of the Superintending Engineer of the Quality Control Department:

> "Thus, it is noticed that mica existing in the rocks under question varies from 7% to 11%. No mention of the permissible percentage of mica is given in IS codes or other

books. Only Handbook on Civil Engineering by P.N. Khanna, reveals that 2% of mica is permissible. In view of the above it is submitted that the pegmatite band stones are not fit for use in masonry dam from quality control unit Machadoli's point of view. This is, however, continuously used in masonry on dam Blocks 16, 17, 18, 19, 25, 26, 27, 28, 29, 35, 37 in which work is continuously in progress. If the higher authority deems it fit, that use of pegmatite is to be continued by overruling the opinion of the undersigned, clear written a instructions may kindly be issued to this office for guiding the AROs, Quality Control deployed on quality control work of masonry dam. Early reply is solicited."

11. In view of the aforementioned development, the Chief Engineer of the Project brought the same to the notice of the Secretary of the Major, Medium and Minor Irrigation Department, Bhopal by a letter dated b 11-1-1985 inter alia making the following recommendations:

> "(/) Permitting the Chief Engineer for declaring Katghora Quarry as an additional quarry for balance quantity of rubble quarry for rubble for masonry dam other than one lakh cubic metre of rubble, as assessed by the geologist to be extracted by the contractors from Therma Pahad Quarry as far as possible in the contracts mentioned in this letter. c
> (//) To allow payment of additional leads from Katghora Quarry for cu m of masonry at the rates detailed in table at Para 5.3 above."

12. Along with the said letter dated 11-1-1985, various other documents were enclosed as specified therein including a letter dated 4-5-1990, wherein it was inter alia stated:

C'10. In view of the above, the Chief Engineer submitted proposals on d 4-7-1985 for government orders. According to the above proposals sanction to pay extra lead amounting to Rs 1,23,23,767 has been sought. This amount is about 3% of the total amount of contract of Rs 41.77 crores. The Chief Engineer had also sought the opinion of World Bank, and World Bank gave a suggestion to deal the issue within the contractual provisions. Similar problem has been raised by the e contractors in Bansagar Project also, and the Executive Committee had recommended approval of lead payment.

> "11. According to the Chief Engineer's report, the Executive Engineers had reported that only 30% to 35% useful stones can be extracted which was not economical. This project is under construction with World Bank assistance, will have to be completed on time, to supply f water to National Thermal Power Corporation, and also to MPEB Power Station. In view of this stones have been brought from Katghora Quarry situated at 22 km where sufficient quality of stones are available. In case, due to above reasons had the agreements drawn been cancelled and new tenders recalled, the cost would have been more. Further, precious time would have been lost in this process which would g have affected the works and it would not be possible to supply water to NTPC and MPEB."

13. In a letter dated 14-2-1985 addressed to the Chief Engineer, World Bank stated:

> "We note you have referred the matter to the Secretary, Irrigation Department, Bhopal for decision. We suggest that the matter be resolved h within contractual limits."
> Pursuant thereto and in furtherance thereof, even the Progress Review Committee observed in its note dated 14-5-1985 as follows:
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> "27. The Chief Engineer (HBP) explained his proposal submitted through his Memo No. 1916/HB/84 dated 29-3-1985. He gave the background of the change of quarry, in view of unexpectedly low yield of useful stone from Therma Pahad Quarry, approved in the technically sanctioned, sanctioned estimate and also on which basis tenders had been invited and contractors' rates accepted. He informed the Committee that the total extra commitment for the various contracts worked out to Rs 1.23 crores—approximately 3% of the total contract value.
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> 28. The Financial Adviser observed that he had not offered any comments on the merit of the case, as then appeared to him essentially a claim case. PRC does not deal with such claim cases.
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> 29. The Committee observed that World Bank too vide their letter of 14-2-1985 had suggested that the matter be resolved within contractual limits.
>
> 30. In view of the above, the Committee did not examine the proposal of the Chief Engineer and refrained from giving any comments in the matter at this stage."

14. However, the contractors invoked the arbitration agreement contained in the said contract in the year 1987 and an ad hoc settlement was proposed. The matter was placed before the Financial Adviser. The Financial Adviser in his note dated 4-1-1991 to the Secretary, while stating that the Financial Adviser functions as a consultant offering comments on cases referred to him in the light of his background, experience and expertise and going by the facts placed before him which may not be treated as a substitute for vetting by the Finance Department wherever such vetting is required under the rules of governmental business, inter alia made the following comments:

> "... However, since the whole contract action was based on the presumption that the required quantity of material of required specification would be available from a quarry within 12 km of the worksite, it can be reasonably assumed that the contractors have quoted their rates on this assumption. The departmental estimates were also based on this assumption. Since, later on, this assumption was found to be invalid and majority of the material had to be obtained from a quarry with an average lead of 22 km from the worksite as against 12 km in respect of the contemplated quarry, the

contractors have a reasonable case for additional payment on account of extra lead of the material brought by them from this second quarry. Thus, their claim is based on consideration of equity rather than that of law."

In regard thereto, the Financial Adviser opined:

> "4. Since the proposed settlement will amount to extra-contractual payment, it has to be ensured that the proposed settlement is acceptable to the contractors concerned. In other words, the settlement has to be a negotiated settlement and should not leave room for further disputes with the various contractors. Since the purpose of the whole exercise is to avoid arbitration it could even be ascertained if there are any other disputed issues in these contracts. If an overall settlement of all the a disputes could be attempted and a sort of package deal is evolved in respect of each contract so that the contracts are finalised once for all leaving no scope for arbitration, on the other hand if the contractors intend to take resort to arbitration for other issues, this issue could also go in for arbitration. A package approach would allow negotiation in a spirit of give and take for an overall settlement of all disputes."

15. The then Secretary (Irrigation) Shri M.S. Billore constituted a committee comprising of the Engineer-in-Chief P.V. Srinivasaiyah, the Chief Engineer, the Financial Adviser, Secretary (Control Board) and the Deputy Secretary, some of whom are Accused 3, 4, 5 and 11. The said Committee submitted a report in respect whereof the Secretary made a note that the same be critically examined.

16. The Officer on Special Duty noticed the recommendations of the Committee, which are as under:

> "(/) As the quarry has been changed by the Department due to technical reasons the contractors cannot be held responsible.
> (//) When the Department itself did not know about the quarry's ^ unsuitability it will be unfair to expect the contractors to bring stones from the changed quarry at the same rates.
> (iii) Payment to the extent of actual quantity brought from the quarries be made."

The proposals of the Chief Engineer, the quantities under each agreement, the rate and the amount were also noticed. It was proposed:

> "Therefore, it is proposed to approve payment for actual quantity and the Chief Engineer may be informed to take undertakings from the contractors before making the payment."

17. The Financial Adviser was asked to examine the said proposal in details. Some discussions apparently were held and it was found necessary to obtain the following information before taking decision at the Government ^ level:

> "1. After the inspection of the geologists how much quantity has been brought from Therma Pahad by each contractor.
>
> 2. How much quantity has been brought from Katghora Quarry.
>
> 3. How the records are kept by the Department about the quantity of g stones brought from different quarries."

A draft letter was also prepared.

18. On or about 6-4-1991, one Shri Uday Shinde in his note stated that the Chief Engineer had not sent any detail in regard to Blocks 31-38 as in the agreement only Therma Pahar Quarry had been shown for the balance work and as the original file was sent to the Hon'ble Minister, it was not possible h to deal with the case. The file was resubmitted and the amount payable to the f°r ad<?itional lead was again put up for administrative approval. g in, the Engineer-in-Chief Committee was asked to examine the a matter. In a note to the Secretary dated 27-4-1991, the salient features in respect of the aforementioned matter were placed again to which Shri M S Billore by his note dated 1-5-1991 opined: Since government decision has already been informed to the Chief a eo Bango Project through Government Letter No. 9/CP/B/31/89/319, Bhopal dated 28-2-1989. Hence, any action at government level is not pending in this case and the Chief Engineer to take action in this case as per government order."

19. Allegedly, Respondent 1 who was Minister at the relevant point of time sat over the file for a period of about six months. He on 4-11-1991 noted:

> "I have studied the case. Whenever any opinion has been sought by the Secretary, from whichever authority, they gave their opinion as per their wisdom. Every time the Secretary has been seeking the opinion from one after another officer. In this process he spent a period of one year between 3-5-1990 to 1-5-1991. In accepting the opinion or recommending any action, it was expected from the Secretary to take into consideration the fact that the opinions had been given as per their wisdom. Therefore, question does not arise to take any action against esubordinate officers. No basis appears for the Secretary to take a totally different vie than the unanimous opinions. Therefore, it is necessary to investigate the basis on which the Secretary Shri Billore had rendered his opinion. The new Pursuant thereto or in Secretary to study the case and give opinion.' Pursuant tnerew or in furtherance thereof, Respondent 2 Shri D.V.S.R. Sarma submitted a report upon constitution of a committee, stating.

"(i) Due to technical reasons, the Department has changed the quarry. Therefore, its liability should not be upon the contractors.

(//) when the Department had not any knowledge about the quarry, and to expect this that even under the changed quarry the contractor should fetch/transport the stones at the same rate, is also not proper.
materials^rht^ ^here, (sic) and for that ™ch of the quantities, the to fn [0Ught from a quarry at more distance, it is proper
to make payment for that much excess distance."

20. Respondent 1 approved the said note of Respondent 2 on or about 20- whereupon the amount in question was sanctioned. Thereafter the accounts were audited and one Shri G.K. Shukla, Deputy Accountant General reported:

(a) The clause of the agreement noted above and the quarry chart clearly bring out that in the event of change of quarry on whatever reasons no claim will be entertained and contractor should b^ore quoting rates, visit the quarry site and satisfy himself regardmg quanUty and quality of the material available. Thus, the sanction appears a negotiated settlement beyond the contractual provisions, for which concurrence of the Finance Department ought to have been obtained. A

(b) PRC considered this as a claim case which was to be decided by the arbitrator under the M.P. Adhikaran Adhiniyan, 1983.

(c) The Member, World Bank suggested to resolve the matter within the contractual limits.

(d) The Secretary, Irrigation had earlier rejected the case as it was not admissible.

(e)The rates quoted by the contractors were inclusive of all lead and lift, being item rate tender."

21. The Auditor General of India also took note of the said report of the Deputy Accountant General, stating:

"Therefore, in spite of the report of the geologist that the good c quality of stone was available in sufficient quantities in the upper portion of the quarry situated in the hill mentioned in the agreement and in spite of there being specific provision in the agreements that no additional payment would be acceptable in the event of change in leads or change in quarry, the payments made to the contractors were irregular and resultantly made additional gains of Rs 102.46 lakhs to them." ^

Pursuant thereto or in furtherance thereof, a complaint was lodged. The matter was investigated by the Special Police Establishment. They collected all the materials and filed a charge-sheet in the Court of the learned Special Judge on 27-3-1997. The case was registered as Special Case No. 6 of 1997.

22. By an order dated 13-5-1997, the learned Special Judge took cognizance of the case, opining:

> "As none of the accused is a public servant, no sanction was required to be obtained in terms of Section 19 of the Act.
> (j'j) Criminal misconduct relating to corrupt practice under Sections 13(l)(d)(i0-(iii) of the Act has nothing to do with normal activity and work under government duty of any public servant at any time."

23. In the year 1997, Respondents 1 and 2 had filed a revision application ^ before the High Court. The Special Judge framed charges against the respondents on or about 29-7-1999, a sample copy whereof reads as under:

> "You were working as Minister-in-charge, Ministry of Water Resources, Government of Madhya Pradesh from June 1990 to September 1992. On the recommendatory note of Shri D.V.S.R. Sarma ignoring the letter dated 14-2-1985 of the Finance Branch of World Bank ^ and earlier decision dated 18-2-1985 according to which the case of extra lead was to be decided within the ambit of the contract in respect of payment of extra lead to the tender contractors concerned for transportation of stones used in construction work of masonry non-flow dam upstream in Hasdeo Bango Project. You in conspiracy with the employees and tender contractors accorded administrative sanction and ^ payment of one crore two lakh forty-six thousand two hundred rupees was made to the contractors towards extra lead. Hence, you while holding the post of public servant misusing the position of the post provided financial benefit to the tender contractors without public interest. Your above act being offence under Sections I3(\)(d)(ii)-(iii) of the Prevention of Corruption Act, 1988 is punishable under Section 13(2) of the Prevention of Corruption Act, 1988. In the alternative, you in criminal conspiracy with Shri D.V.S.R. Sarma, Secretary, working in the Ministry of Water Resources, Government of Madhya Pradesh and other employees and contractors acted as mentioned above, which is punishable under Sections 13(1)(gQ0'O-(»O read with Section 120-B IPC, which is within the jurisdiction of this Court. Hence, I hereby direct that you will be tried for the offence mentioned above by this Court."

Aggrieved by and dissatisfied therewith, the respondents filed revision applications before the High Court, which by reason of the impugned order have been allowed. The State is, thus, before us.

24. Mr K.T.S. Tulsi, learned Senior Counsel appearing on behalf of the appellant, in support of the appeal, inter alia would submit: The High Court committed a serious error in opining that an order of sanction in terms of Section 197 of the Code of Criminal Procedure was required to be obtained despite the fact that Respondents 1 to 7 were no longer holders of public office(s).

(ii) While exercising its revisional jurisdiction, the High Court could not enter into the question of appreciation of evidence as also the probative value of the materials brought on record, contrary to the tests laid down by this Court in Soma Chakravarty v. State as the tests for framing of charge are different from the tests for recording a judgment of acquittal against an accused insofar as whereas in the former, strong suspicion would be sufficient, in the latter proof beyond any reasonable doubt is necessary.

(iii) The prosecution agency being a special agency constituted under the Madhya Pradesh Special Police Establishment Act, which functions under the jurisdiction of the Lokayukta, only because all materials have been made part of the charge-sheet, the same could not have been relied upon by the High Court as the only materials upon which the prosecution would rely upon for proving its case would be the terms of the contract, the note-sheets, the letters dated 4-8-1983, 11-8-1983, 16-8-1983, 17-8- 1983, 10-7-1984, 14-11-1984 and 2-3-1988, in terms whereof the contractors were categorically informed that they would not be entitled to any extra amount towards additional lead or otherwise.

(iv) World Bank having opined that stones from alternative sources may be obtained within the budgeted amount, the extra amount could not have been sanctioned by the respondents.
(v) By reason of the acts of the respondents, the State has suffered a loss to the extent of Rs 1.02 crores and in that view of the matter, the High Court should not have passed the impugned order. (vz) As none of the accused is a public servant, the question of obtaining sanction in terms of Section 19 of the Act did not arise. (vz'z) Criminal misconduct relating to corrupt practices under Sections I3(l)(d)(ii)-(iii) of the Act cannot be mingled with the normal activity and duties of the public servant at any time, and, thus, no order of sanction was required to be obtained even under Section 197 of the Code ^ of Criminal Procedure, 1973. (vz'zT) The Indian Institute of Technology having tested the rocks excavated from Therma Pahar Quarry and having opined that they can safely be used for rubble masonry as well as for coarse and fine aggregate, any opinion rendered contrary thereto or inconsistent therewith should have been ignored.

25. Mr U.U. Lalit and Mr Vivek Tankha, learned Senior Counsel appearing on behalf of the respondents, on the other hand, urged: The court at the stage of framing of charge and consequently the High Court in exercise of its jurisdiction under Sections 397 and 401 of the Code of Criminal Procedure were entitled to consider the entire ^ materials on record for the purpose of arriving at a finding as to whether the contents thereof, even if taken to be correct

in their entirety, constituted a prima facie case against the accused or not. (z'z) It would not be correct to contend that although all the documents collected during investigation form part of the final report submitted by the Special Police Establishment in terms of sub-section (5) e of Section 173 of the Code of Criminal Procedure, for the purpose of framing of charge or otherwise the prosecution can rely only on a few of them so as to make a distinction between the documents which are in favour of the prosecution and those which are in favour of the accused. (z'z'z) The materials brought on record clearly show that the authorities concerned found it necessary to explore the possibility of procuring f stones of requisite quality from other sources as they had proceeded on a wrong premise that stone of the requisite quality to the extent of 8 lakh cubic metres would be available in the quarry in question.

(iv) Although the contract could be considered to show that no claim for any material collected elsewhere, without obtaining the prior approval
of the Engineer-in-Charge, as was contended by the prosecution, was 9 admissible, on a close reading of the terms of the contract it would appear that a contingency of this nature viz. that the parties entered into a contract on a mistaken fact was not contemplated as the contractors cannot be asked to take upon themselves the financial burden in respect of matter for which they were not responsible.

(v) A decision having been taken by the highest authority not only ^ upon taking into consideration the opinion of all concerned viz. from the
Executive Engineer to the Minister concerned but also in view of the opinion of the Government of India and on the basis of two reports of the Committee viz. reports by Respondent 2 D.V.S.R. Sarma Committee and Respondent 3 RV. Srinivasaiyah Committee, no interference with the impugned judgment is warranted.

(vi) The documents relied upon by the prosecution, even if given face value and taken to be correct in their entirety, do not disclose commission of any offence under the Prevention of Corruption Act as no allegation b had been made as regards misuse or abuse of office.

(v/7) The State having acted within its jurisdiction in taking a decision in regard to making of extra payment by way of novation of the original contract, no exception thereto can be taken as the situation was unforeseen. Even the Arbitral Tribunal having passed an award in favour of the contractor which is in consonance with a decision of this Court in K.N. Sathyapalan v. State of Kerala1, the respondents cannot be said to have committed any offence.

(viii) In any view of the matter, no evidence has been brought on record to show that any conspiracy was entered into by the respondents inter se.

(z'x) Assuming that the respondents have arrived at a wrong conclusion, the same would only constitute an error of judgment and not a criminal misconduct.

(x) The mala fide attitude on the part of the State would be evident from the fact that the respondents herein who were members of the

■ Committee have also been roped in although they had made fair, proper - and impartial recommendations which could have been accepted or rejected. Even Respondent 1 in his note dated 4-11-1991 did not issue any direction to make payment but merely asked Respondent 2 to have a relook at the entire matter as prior to the purported opinion of Mr Billore, as contained in his note dated 1-5-1991 he had opined otherwise viz. not in the tune of the recommendations made by the Quality Control Department i.e. in favour of the contractors.

(xi) There is nothing on record to show that Respondents 1 to 7 herein have done any act which was beyond their official duty and hence, the impugned judgment is unassailable.

26. The question raised before us is required to be determined on the backdrop of factual matrix involved herein. We have taken into considerationg in detail the background materials only with a view to consider as to whether the High Court was right in opining that no case for framing of charges against the respondents was made out.

27. The fact that the State entered into contracts with Respondents 8, 9 and 10 is not in dispute. The basic terms of the contract, which we have taken note of, are also not in dispute. What is in dispute is the interpretation and application thereof. The contract contained an arbitration clause. The respondents herein invoked the said arbitration agreement, as noticed hereinbefore, as far back in the year 1987. Indisputably, an award had been a made in their favour on the basis of a settlement arrived at by and between the parties. Such a settlement was arrived at on the basis of the stand taken by the authorities of the State of Madhya Pradesh upon entering into detailed deliberations.

28. The learned counsel for the parties took us through the entire agreement to raise rival contentions as to whether despite the apparent ^ rigours contained therein, the contractors could have been paid any additional amount towards extra lead. We think a construction of the terms of contract in the light of the factual matrix of the matter to which we have adverted to heretobefore, as has been argued by the respondents, is possible. It is, however, not necessary for us to delve deep into the matter inasmuch as we are concerned only with the question as to whether the materials brought on c record form sufficient basis for framing of charges under Sections of the Act read with Section 13(2) thereof read with Section 120-B of the Penal Code or not.

29. At the outset, however, we must place on record that construction of the dam over River Hasdeo Bango became necessary for the purpose of ^ supply of water to National Thermal Power Corporation. It was a World Bank project. The project was required to be completed within a time-frame. Stones required to be used for the construction of the dam, as of necessity, were required to be of sufficient strength.

30. The opinion of the Indian Institute of Technology, referred to by Mr Tulsi, is not on record. Correspondences as also the opinion of the Central e Water Commission, Government of India, however, point out that stones of requisite strength were not available

at Therma Pahar Quarry. The quantum of stone required was eight lakh cubic metres and only one lakh cubic metres was available thereat. The balance seven lakh cubic metres of stone was, thus, required to be obtained from the quarries situated at Villages Katghora, Hunkra and Maheshpur.

31. Stone is a minor mineral within the meaning of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the Minor Mineral Concession Rules framed by the State. Lease and/or licence for extraction thereof is to be granted by the Collector. Although the Mines Department of the State intended to grant "quarry lease" in favour of others g having regard to the requirements of the State, the said quarries were reserved, subject to certain conditions. Respondents 8 to 10, in view of the provisions of the Mines and Mineral (Development and Regulation) Act, 1957 and the Madhya Pradesh Minor Mineral Concession Rules could not have on their own undertaken mining operation for the purpose of extracting the said minor mineral. They could have done so only on a licence granted in ^ their favour by the Collector/State.

32. However, as the hillocks of the villages in question were reserved for departmental use, only by reason thereof the contractors could carry on mining operation thereat and not otherwise. It was, therefore, a conscious decision on the part of the competent authorities of the State. The contract itself suggests that there was a possibility of dispute in regard to allocation of the parts of the quarries. A dispute resolution mechanism by creating a forum viz. the office of the Superintending Engineer was created.

33. The intra-departmental and interdepartmental correspondences and note-sheets to which we have adverted to heretobefore clearly go to show that the authorities in charge of construction of the dam were aware of the difficulties which were being faced by the contractors. Their apprehension was that in the event the contractors were not permitted to mine stones from Katghora Quarry and other quarries, they may leave the job as a result whereof the entire project might come to a stand-still. The representations made by the contractors for the aforementioned purpose, even if to be ignored, the intra-departmental and interdepartmental correspondences cannot be. They clearly point out a clear picture as regards necessity for explaining the possibilities of extracting stones from some other mines for being used in the construction of dam.

34. We would proceed on the basis that two divergent opinions on the construction of the contract in the light of the stand taken by World Bank as also the earlier decision taken by the State were possible. That, however, would not mean that a fresh decision could not have been taken keeping in view the exigencies of the situation. A decision to that effect was not taken only by one officer or one authority. Each one of the authorities was ad idem in their view in the decision-making process. Even the Financial Adviser who was an independent person and who had nothing to do with the implementation of the Project made recommendations in favour of the contractors stating that if not in law but in equity they were entitled to the

additional amount. From the materials available on record, it is crystal clear that the decision taken was a collective one. The decision was required to be taken in the exigency of the situation. It may be an error of judgment but then no material has been brought on record to show that they did so for causing any wrongful gain to themselves or to a third party or for causing wrongful loss to the State.

35. Section 13 of the Act provides for criminal misconduct by a public servant. Such an offence of criminal misconduct by a public servant can be said to have been committed if in terms of Sections I3(l)(d)(ii)-(iii) a public servant abuses its position and obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest. Sub-section (2) of Section 13 provides that any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

36. Criminal conspiracy has been defined in Section 120-A of the Penal Code, 1860 to mean:

> "120-A. Definition of criminal conspiracy.—When two or more persons a agree to do, or cause to be done,—
> (1) an illegal act, or
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement b is done by one or more parties to such agreement in pursuance thereof.
> Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

Section 120-B of the Penal Code provides for punishment for criminal conspiracy.

37. Criminal conspiracy is an independent offence. It is punishable c separately. Prosecution, therefore, for the purpose of bringing the charge of criminal conspiracy read with the aforementioned provisions of the Prevention of Corruption Act was required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of bringing a criminal misconduct on the part of an accused.

38. A criminal conspiracy must be put to action inasmuch as so long a ^ crime is generated in the mind of an accused, it does not become punishable. What is necessary is not thoughts, which may even be criminal in character, often involuntary, but offence would be said to have been committed thereunder only when that take concrete shape of an agreement to do or cause to be done an illegal act or an act which although not illegal by illegal means and then if nothing further is done the agreement would give rise to a e criminal conspiracy. Its ingredients are:(/) an agreement between two or more persons; (t'O an agreement must relate

to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means.

39. What is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. While saying so, we are not oblivious of the fact that often conspiracy is hatched in secrecy and for proving the said offence substantial direct evidence may not be possible to be obtained. An offence of criminal conspiracy can also be proved by circumstantial evidence. G

40. In Kehar Singh v. State (Delhi Admn.fi this Court has quoted (at SCC p. 731, para 271) the following passage from Russell on Crimes (12th Edn., Vol. 1):

> "The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough."

41. In State (NCT of Delhi) v. Navjot Sandhit this Court stated the law, thus: (SCC p. 691, para 101)

> "101. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution."

42. We may also notice that in Ram Narayan Popli v. CBP, it was held: (SCC p. 778, para 342)

> "342. ... Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment."

43. In Yogesh v. State of Maharashtra this Court opined: (SCC p. 402, para 25)

> "25. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof.

> Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement."

44. Ex facie, there is no material to show that a conspiracy had been hatched by the respondents. Mr Tulsi would suggest that the very fact that Respondent 1 being a Minister kept the file with him for a period of six months so as to see that the then Secretary Mr M.S. Billore retires so as to enable him to obtain opinion of another officer would prima facie establish that he intended to cause pecuniary gain to Respondents 8, 9 and 10.

45. We have noticed hereinbefore that the Minister in his note dated a 4-11-1991 did not make any recommendation. He merely lamented the manner in which the former Secretary Mr M.S. Billore acted as prior thereto, the said authority himself for all intent and purport had accepted the recommendations of the authorities in charge of construction of the dam including the Chief Engineer. He constituted a committee. He obtained the opinion of the Financial Adviser. If upon consideration of the entire materials b on record, independent opinion had been rendered and recommendations were made, it is difficult to comprehend as to how that by itself would constitute a criminal misconduct or leads to the conclusion of hatching any criminal conspiracy. Recommendations made by the Committee or the opinion rendered by an independent officer like the Financial Adviser need not be acted upon. It was for the State to take a decision. Such a decision was c required to be taken on the basis of the materials available.

46. In Inspector Prem Chand v. Govt, of NCT of DelhV this Court observed: (SCC pp. 570-71, paras 10-11)

> "10. In State of Punjab v. Ram Singh8 it was stated: (SCC pp. 57-58, para 5)
> '5. Misconduct has been defined in Black's Law Dictionary, 6th Edn., at p. 999, thus:
> "Misconduct.—A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, e delinquency, impropriety, mismanagement, offense, but not negligence or carelessness."
> Misconduct in office has been defined as:
> "Misconduct in office.—Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to f perform, acts performed improperly, and failure to act in the face of an affirmative duty to act." '

11. In P. Ramanatha Aiyar's Law Lexicon, 3rd Edn., at p. 3027, the term 'misconduct' has been defined as under: 'Misconduct.—The term "misconduct" implies a wrongful intention, and not a mere error of judgment. ^
* * *
MISCONDUCT is not necessarily the same thing as conduct involving moral turpitude.
L.
(2007) 4 SCC 566 : (2007) 2 SCC (L&S) 58 : 2007 AIR SCW 2532

(1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435

> The word "misconduct" is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being, construed. "Misconduct" literally means wrong conduct or improper conduct.'
> (See also Bharat Petroleum Corpn. Ltd. v. T.K. Raju .)"

47. Even under the Act, an offence cannot be said to have been committed only because the public servant has obtained either for himself or for any other person any pecuniary advantage. He must do so by abusing his position as a public servant or holding office as a public servant. In the latter category of cases, absence of any public interest is a sine qua non. The materials brought on record do not suggest in any manner whatsoever that Respondents 1 to 7 either had abused their position or had obtained pecuniary advantage for Respondents 8, 9 and 10, which was without any public interest.

48. Whether, on the one hand, the dam should be constructed within a time-frame fixed by World Bank is a public interest or whether sticking to the terms of the contract which may lead to abandonment of work by the contractors would be a public interest is a matter over which a decision was required to be taken, particularly when the authorities proceeded on the basis that they had made advertisements and called for the tender on a wrong premise viz. the stones available in the quarry in question for supply of requisite quality of stone were not in requisite quantity.
49. It is also interesting to notice that the prosecution had proceeded against the officials in a pick-and-choose manner. We may notice the following statements made in the counter-affidavit which had not been denied or disputed to show that not only those accused who were in office for a very short time but also those who had retired long back before the file was moved for the purpose of obtaining clearance for payment of additional amount from the Government viz. M.N. Nadkami who worked as Chief Engineer till 24-3-1987 and S.W. Mohogaonkar, Superintending Engineer who worked till 19-6-1989 have been made accused but, on the other hand, those who were one way or the other connected with the decision viz. Shri J.R. Malhotra and Mr R.D. Nanhoria have not been proceeded at all. We fail to understand on what basis such a discrimination was made.

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50. In Soma Chakravarty1, whereupon strong reliance has been placed by Mr Tulsi, this Court opined: (SCC p. 411, para 23)

> "23. In a case of this nature, the learned Special Judge also should have considered the question having regard to the 'doctrine of parity' in mind. An accused similarly situated has not been proceeded against only because, the departmental proceedings ended in his favour. Whether an accused before him although stands on a similar footing despite he having not been departmentally proceeded against or had not been completely exonerated also required to be considered. If exoneration in a departmental proceeding is the basis for not framing a charge against an accused person who is said to be similarly situated, the question which a requires a further consideration was as to whether the applicant before it was similarly situated or not and/or whether the exonerated officer in the departmental proceeding also faced same charges including the charge of being a party to the larger conspiracy."

51. There cannot be any doubt whatsoever that the tests for the purpose of framing of charge and the one for recording a judgment of conviction are b different. A distinction must be borne in mind that whereas at the time of framing of the charge, the court may take into consideration the fact as to whether the accused might have committed the offence or not; at the time of recording a judgment of conviction, the prosecution is required to prove beyond reasonable doubt that the accused has committed the offence.

52. In this case, the probative value of the materials on record has not c been gone into. The materials brought on record have been accepted as true at this stage. It is true that at this stage even a defence of an accused cannot be considered. But, we are unable to persuade ourselves to agree with the submission of Mr Tulsi that where the entire materials collected during investigation have been placed before the court as part of the charge-sheet, the court at the time of framing of the charge could only look to those ^ .materials whereupon the prosecution intended to rely upon and ignore the others which are in favour of the accused.

53. The question as to whether the court should proceed on the basis as to whether the materials brought on record even if given face value and taken to be correct in their entirety disclose commission of an offence or not must be determined having regard to the entirety of materials brought on record by e the prosecution and not on a part of it. If such a construction is made, sub¬section (5) of Section 173 of the Code of Criminal Procedure shall become meaningless.

54. The prosecution, having regard to the right of an accused to have a fair investigation, fair inquiry and fair trial as adumbrated under Article 21 of ^ the Constitution of India, cannot at any stage be deprived of taking advantage of the materials which the prosecution itself has placed on record. If upon perusal of the entire materials on record, the court arrives at an opinion that two views are possible, charges can be framed, but if only one and one view

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is possible to be taken, the court shall not put the accused to harassment by asking him to face a trial. (See State of Maharashtra v. Som Nath Thapa .)

55. This leaves us with the question as to whether an order of sanction was required to be obtained. There exists a distinction between a sanction for prosecution under Section 19 of the Act and Section 197 of the Code of Criminal Procedure. Whereas in terms of Section 19, it would not be necessary to obtain sanction in respect of those who had ceased to be a public servant, Section 197 of the Code of Criminal Procedure requires sanction both for those who were or are public servants.

56. Strong reliance has been placed by Mr Tulsi on a judgment of this Court in Centre for Public Interest Litigation v. Union of India . In that case, it was held: (SCC pp. 208-09, paras 9-11)

> "9. 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 from 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.

10. Use of the expression 'official duty' implies that the act or omission must have been done by the public servant in the 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.

11. 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."

57. Were Respondents 1 to 7 required to act in the matter as a part of official duty? Indisputably, they were required to do so. Be he an Executive Engineer, Superintending Engineer, Chief Engineer, Engineer-in-Chief, Secretary or Deputy Secretary, matters were placed before them by their subordinate officers. They were required to take action thereupon. They were required to apply their own mind. A decision on their part was required to be taken so as to enable them to oversee supervision and completion of a government project. The Minister, having regard to the provisions of the Rules of Executive Business, was required to take a decision for and on behalf of the State.

58. Some of the respondents, as noticed hereinbefore, were required to render their individual opinion required by their superiors. They were members of the Committee constituted by the authorities viz. the Minister or the Secretary. At that stage, it was not possible for them to refuse to be a Member of the Committee and/or not to render any opinion at all when they were asked to perform their duties. They were required to do the same and, thus, there cannot be any doubt whatsoever that each one of Respondents 1 to 7 was performing his official duties.

59. For the purpose of attracting the provisions of Section 197 of the Code of Criminal Procedure, it is not necessary that they must act in their official capacity but even where public servants purport to act in their official capacity, the same would attract the provisions of Section 197 of the Code of Criminal Procedure. It was so held by this Court in Sankaran Moitra v. Sadhna Das . The question came up for consideration before this Court in Matajog Dobey v. H.C. Bhari wherein it was held: (AIR pp. 48-49, para 17)

"7 7. 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 interrelated 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 Ram Singh v. Crown 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. 56:
'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 observed in Gill case : (IA pp. 59-60)
'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. ... 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 case14 is referred to with approval in the later case of Lieutenant Hector Thomas Huntley v. King Emperor 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 Albert West Meads v. R.11 does not carry us any further; it adopts the reasoning in Gill case15."

60. The said principle has been reiterated by this Court in B. Saha v. M.S. Kocharxi in the following terms: (SCC pp. 184-85, paras 17-18)

"77. The words 'any offence alleged to have been committed by him a 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 c 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 ofM.P. : (AIR p. 227, para 16)

'16. ... 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'.

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." (emphasis in original)

(See also R. Balakrishna Pillai v. State of Kerala .)

61. In Rakesh Kumar Mishra v. State of Bihar this Court held: (SCC p. 564, para 12)

"72. 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 the f 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 the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been fir committed by a public servant in the 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 an 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.

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> Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in the 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 the course of service but not in the discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted."

62. Reliance has been placed by Mr Tulsi on Parkash Singh Badal v. State of Punjab wherein this Court held: (SCC p. 32, para 38)

> "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."

63. In Parkash Singh Badal case22, the appellant therein was charged for commission of an offence of cheating under Section 420 and Sections 467, 468, 471 and 120-B of the Penal Code. In the factual matrix involved therein, it was held: (Parkash Singh Badal case22, SCC p. 25, para 29)

> "29. The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on 'failure of justice' and that too 'in the opinion of the court'. In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the 'failure of justice' is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction as observed in para 95 of Narasimha Rao case22. Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the old Act [Section 19(2) of the Act] question relates to doubt about authority to grant sanction and not whether sanction is necessary."

64. In State of Karnataka v. Ameerjan it was held that an order of sanction is required to be passed on due application of mind. Thus, in the instant case, sanction for prosecution in terms of Section 197 of the Code of Criminal Procedure was required to be obtained.

65. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly.