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S.197 CrPC| Sanction Not Needed To Prosecute Police Officers Accused Of Lodging False Cases Or Fabricating Evidence : Supreme Court

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The Supreme Court held that a police official who is accused of lodging a false case cannot claim that he cannot be prosecuted without the sanction under Section 197 of the Code of Criminal Procedure. The protection of Section 197

CrPC is available only for acts discharged in the course of official duties.

Since fabrication of evidence and filing bogus cases are not part of the official duties of a police official, the protection under Section 197 CrPC are not applicable to such acts, the Court explained.

"...it follows that when a police official is said to have lodged a false case, he cannot claim that sanction for prosecution under Section 197 CrPC was required since it can be no part of the official duty of a public official to lodge a bogus case and fabricate evidence or documents in connection with the same," the Court held.

The bench comprising **Justices J.B. Pardiwala and Manoj Misra** overturned the MP High Court's decision to quash the criminal case against police officials accused of fabricating alibi documents to shield the accused in a murder case. The High Court quashed the case noting that prior sanction under Section 197 Cr.P.C. was not obtained before prosecuting the respondent-police officers.

The Court said that the High Court erred in quashing the case against the respondent officials citing lack of sanction under Section 197 Cr.P.C. Also, the Court noted that when the case against the public servant is at the preliminary stage, then it would not be appropriate for the courts to quash the case when evidence may have to be adduced before the appropriate trial court to ascertain whether the alleged act committed by the public servant falls within the official duties of the public servant or not

Reverting on to the facts of the case, the Court upon placing reliance on various authorities held that fabrication of documents is not part of the official duties of the respondent police officer, therefore no sanction was needed to prosecute them.

"At the cost of repetition, we say that the position of law on the application of Section 197 Cr.P.C. is clear – that it must be decided based on the peculiar facts and circumstances of each case. This Court has held in a legion of decisions that any misuse or abuse of powers by a public servant to do something that is

impermissible in law like threatening to provide a tutored statement or trying to obtain signatures on a blank sheet of paper; causing the illegal detention of an accused; engaging in a criminal conspiracy to create false or fabricated documents; conducting a search with the sole object of harassing and threatening individuals, amongst others, cannot fall under the protective umbrella of Section 197 Cr.P.C.", the judgment authored by **Justice Pardiwala** said.

The Court reasoned that if the public servants are allowed to perform such acts which do not form part of their official duty under the garb of sanction then it would enable them to use their status as public servants as a facade for doing an objectionable, illegal and unlawful act and take undue advantage of their position.

The Court said that the mere fact that a wrongful act such as registering a false case arose out of official duty does not automatically bring the act within the purview of Section 197 CrPC.

"Allowing so would enable the accused to use their status as public servants as a facade for doing an objectionable, illegal and unlawful act and take undue advantage of their position," the Court said.

Accordingly, the Court allowed the appeal, and the trial was directed to proceed against the respondents.

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Appearance:

For Petitioner(s) Mr. Ravindra Singh, Sr. Adv. Mr. Raman Yadav, Adv. Mr. Syed Mehdi Imam, AOR Ms. Akriti Chaturvedi, Adv. Mr. Priyam Kaushik, Adv. Mr. Vishesh Kumar Singh, Adv.

For Respondent(s) Mr. R. Basant, Sr. Adv. Mr. Devashish Bharukha, Sr. Adv. Mr. Mayank Sapre, Adv. Mr. Yash Sharma, Adv. Mr. Aditya Pratap Singh, Adv. Mr. Ujjwal Singh, AOR Mr. Ardhendumauli Kumar Prasad, Sr. A.A.G. Mr. Vishnu Shankar Jain, AOR Ms. Ananya Sahu, Adv. Mr. Akshay Kumar, Adv. Mrs. Nanita Sharma, AOR Mr. Vivek Sharma, Adv. Mr. Shailendra Singh, Adv.

Case Title: OM PRAKASH YADAV VERSUS NIRANJAN KUMAR UPADHYAY & ORS

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