



2025 INSC 539

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1527 OF 2025

CENTRAL BUREAU OF INVESTIGATION

... APPELLANT

VS.

RAMESH CHANDER DIWAN

... RESPONDENT

WITH

CRIMINAL APPEAL NO. 1528 OF 2025

ASHOK KUMAR MANUJA

... APPELLANT

VS.

**CENTRAL BUREAU OF
INVESTIGATION AND ANOTHER**

... RESPONDENTS

JUDGMENT

DIPANKAR DATTA, J.

1. These two appeals, by special leave, are directed against a common judgment and order dated 29th January, 2024¹ passed by the High Court of Punjab and Haryana at Chandigarh. The impugned order of the High Court partly allowed a revision petition² of the respondent,

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JATINDER KAUR
Date: 2024.04.22
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Reason:

¹ impugned order

² Crl. Revision Petition No.1388 of 2021

wherein an order of the Special Court (CBI) dated 29th October, 2021 dismissing the respondent's application for discharge was under challenge. While the High Court discharged the respondent in respect of offences punishable under the Indian Penal Code, 1860³ on the ground that no sanction had been obtained as per the statutory mandate contained in Section 197, Code of Criminal Procedure, 1973⁴, the prayer of the respondent for discharge *qua* offences alleged against him under the Prevention of Corruption Act, 1988⁵ was spurned. The High Court held that even though the respondent had retired from service, the amended provisions of Section 19 of the PC Act would have no retrospective application and, therefore, he was not entitled to derive any benefit of such amendment.

- 2.** Central Bureau of Investigation (CBI) is the appellant in the lead appeal whereas the appellant in the connected appeal is the first informant/complainant.
- 3.** An FIR was registered on 9th December, 2014 at Police Station ACB, CBI Chandigarh, under Sections 120B and 420 of the IPC and under Section 13(2) read with Section 13(1)(d) of the PC Act against the respondent. It was alleged in the FIR that while the respondent was functioning as the Executive Engineer, Public Health, Municipal Corporation, Chandigarh, in connivance and collusion with the co-accused, M/s Selvel Media Services Pvt. Ltd., he caused wrongful loss

³ IPC

⁴ Cr. PC

⁵ PC Act

in excess of Rs.13.66 crore to the Government exchequer by changing the terms and conditions of the Detailed Notice Inviting Tender. A detailed investigation followed and on completion thereof, a charge-sheet dated 10th October, 2016 under Section 173(2), Cr. PC was filed in the Court of the Special Judge, CBI, Chandigarh⁶. Bare reading of the charge-sheet reveals that the respondent, along with the co-accused, had committed offences of the nature alleged in the FIR. The Special Judge *vide* order dated 23rd November, 2021 was pleased to frame charges against the accused persons.

4. The respondent had retired from service, having attained the age of superannuation on 30th September, 2016. Sanction under Section 197 of the Cr. PC was not obtained by CBI. The respondent applied for discharge on the ground of absence of sanction at any stage. He also sought protection under the amended provisions of Section 19(1) of the PC Act too, effective from 26th July, 2018, which mandated sanction to be obtained even in respect of retired public servants. As noted above, the Special Court dismissed the application for discharge whereafter the High Court, on the respondent's application under Section 401 read with Section 482 of the Cr. PC, passed the impugned order.

5. Appearing in support of the appeal, Mr. Suryaprakash V. Raju, learned Additional Solicitor General contended that the respondent though was a public servant removable from office by the Governor of Punjab but

⁶ Special Court

upon being sent to join his new assignment in the Municipal Corporation, Chandigarh, on usual terms and conditions, he ceased to be a public servant and the provisions of Section 197, Cr. PC had no application to him. According to Mr. Raju, the High Court fell in error in holding that without sanction under Section 197, Cr. PC, cognizance of the offence could not have been taken. Reliance was placed by Mr. Raju on several decisions of this Court in support of his prayer for interference with the impugned order. The same are:

- (i) ***S.S. Dhanoa v. Municipal Corporation Delhi and Others***⁷,
- (ii) ***Mohd. Hadi Raja v. State of Bihar and Another***⁸,
- (iii) ***N.K. Sharma v. Abhimanyu***⁹,
- (iv) ***Punjab State Warehousing Corporation v. Bhushan Chander and Another***¹⁰,
- (v) ***Bharat Sanchar Nigam Limited and Others v. Pramod V. Sawant and Another***¹¹,
- (vi) ***State of Kerala v. V. Padmanabhan Nair***¹²; and
- (vii) ***Inspector of Police v. Battenapatla Venkata Ratnam***¹³.

⁷ (1981) 3 SCC 431

⁸ (1998) 5 SCC 91

⁹ (2005) 13 SCC 213

¹⁰ (2016) 13 SCC 44

¹¹ (2019) 16 SCC 63

¹² (1999) 5 SCC 690

¹³ (2015) 13 SCC 87

6. We have heard Mr. Raju, at length. Except for seeking certain clarifications, we have not felt it necessary to call upon learned counsel for the respondent to argue.

7. The only question that has engaged our consideration is whether the High Court was right in holding that sanction under Section 197, Cr. PC not having been obtained, the respondent should be discharged for the offences registered under Sections 120B and 420 of the IPC against him.

8. Since a decision on these two appeals would depend entirely on how we read and interpret Section 197, Cr. PC in the light of the deputation assignment of the respondent, we prefer to commence our analysis by noting the relevant positions held by the officers/employees who were parties to the proceedings before this Court in the decisions cited by Mr. Raju, what precisely were the questions which arose for determination in such cases and how the same were answered.

9. In ***S.S. Dhanoa*** (supra), the appellant was a member of the Indian Administrative Service. While the appellant was holding the office of Joint Commissioner (State Liaison) in the Ministry of Agriculture, (Department of Agriculture), his services were placed at the disposal of the Department of Co-operation, for his appointment as the General Manager, Super Bazar, Connaught Place, New Delhi. The short question that fell for determination in the appeal was whether a member of the Indian Administrative Service, whose services are placed at the disposal of an organisation which is neither a local authority, nor a

corporation established by or under a Central, Provincial or State Act, nor a Government Company, by the Central Government or the Government of a State, can be treated to be a 'public servant' within the meaning of clause Twelfth of Section 21 of the IPC for the purpose of Section 197, Cr. PC. The question was answered in the negative.

10. *Mohd. Hadi Raja* (supra), however, did not involve a deputationist.

The common question of law arising for decision in that case was whether the provisions of sanction under sub-section (1) of Section 197, Cr. PC are applicable for prosecuting officers of public sector undertakings or government companies. Since such officers are removable from service by authorities other than the Government, it was held that they were not entitled to invoke Section 197 of the Cr. PC.

11. Whether a Class 1 officer of the Government of Haryana deputed to work as Managing Director of a cooperative society is entitled to protection under sub-section (1) of Section 197, Cr. PC was the question arising for decision in ***N.K. Sharma*** (supra). It was held that no sanction was required in the case therein as the appellant's salary was not paid by the Government nor was he at the relevant time in service of the State, thereby, not satisfying the requirements of being a "public servant" within the meaning of Section 197, Cr. PC.

12. *Punjab State Warehousing Corporation* (supra) involved the question as to whether the first respondent, an employee of the appellant corporation, was a public servant and the trial in its entirety

stood invalid because sanction to prosecute under Section 197, Cr. PC had not been obtained. It was held by this Court following the decision in ***Mohd. Hadi Raja*** (supra) that the appellant being an employee of the appellant corporation was not entitled to the benefit of Section 197, Cr. PC and he cannot put forth the claim that breach of trust is connected with his official duty, thereby not necessitating sanction under Section 197, Cr. PC.

13. In ***Bharat Sanchar Nigam Limited*** (supra), Bharat Sanchar Nigam Limited was the first appellant whereas the other appellants were its employees. The complainant was the respondent. The appeal before this Court raised a short and pure question of law with regard to protection under Section 197, Cr. PC being available to the employees of a public sector corporation claiming the status of a 'public servant'. This happened to be a case where, except one of the appellants who retired while on deputation, deputation of the other employees was followed by absorption in the undertaking. Following ***Mohd. Hadi Raja*** (supra), it was held that the employees of the first appellant were not entitled to invoke Section 197, Cr. PC.

14. This Court in ***V. Padmanabhan Nair*** (supra) held that an accused facing prosecution for offences under the PC Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the offence.

15. ***Battenapatla Venkata Ratnam*** (supra) was cited for emphasizing that protection under Section 197, Cr. PC from harassment is given in

public interest and the same cannot be treated as a shield to protect corrupt officials.

16. Having considered the precedents cited by Mr. Raju, with which we have no quarrel, and on consideration of the applicable statutory provisions, we now proceed to assign reasons for our ultimate conclusion.

17. The question arising for decision cannot but be decided without keeping the concept of deputation in the field of public service law in perspective. We, therefore, see the need to briefly touch upon such concept.

18. The concept of deputation was explained by this Court in ***State of Punjab v. Inder Singh***¹⁴ as follows:

18. The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. ...

(emphasis ours)

19. In ***Umapati Choudhary v. State of Bihar***¹⁵, this Court had the occasion to observe:

¹⁴ (1997) 8 SCC 372

¹⁵ (1999) 4 SCC 659

8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not.

(emphasis ours)

20. Where exigency of public service requires the parent department (lending authority) to send its employee on deputation to the receiving department (borrowing authority) and such an arrangement is preceded by a consensus among the three, i.e., the lending authority, the borrowing authority and the officer/employee, the statutory rules do normally provide for his repatriation. In such a case, there can be no severance of relationship with the parent department. However, during the period the officer/employee is sent on deputation to the receiving department, the parent department may fill up the post vacated by the deputationist in accordance with law under the category of 'deputation vacancy', which also is not unknown in public service law, but it is only for a limited period till the officer/employee is repatriated.

21. Insofar as disciplinary control over a deputationist is concerned, such control generally vests with the appropriate authority in the parent department in which the substantive appointment is held. However, it cannot be gainsaid that by statutory rules or by conditions contained

in the order of deputation, it can be provided that the deputationist, for the period he is serving on deputation, will be subject to the disciplinary control of the department to which he is deputed. Should there be a provision in this behalf, the deputationist may be proceeded against, if the occasion therefore arises, by the appropriate authority in the receiving department. Although generally an employee is supposed to have one master, in the context of deputation there could be a plurality of masters. Nonetheless, it is the statutory rules which would be the deciding factor. If the rules indicate that disciplinary control is retained by the parent department, the receiving department would have no jurisdiction to exercise such control.

22. Having noted the concept of assignment on deputation, a quick look at the object that Section 197, Cr. PC seeks to achieve would suffice for completeness of understanding. We may profitably refer to a Constitution Bench decision of this Court in ***Matajog Dobey v. H.C. Bhari***¹⁶. While repelling a challenge that Section 197 of the Code of Criminal Procedure, 1898 (*pari materia* with Section 197, Cr. PC) offended Article 14 of the Constitution, this Court held:

15. ... Article 14 does not render Section 197 of the Criminal Procedure Code ultra vires as the discrimination is based upon a rational classification. Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. It was argued that Section 197 of the Criminal Procedure Code vested an absolutely arbitrary power in the Government to grant or withhold sanction at their sweet-will and pleasure, and the legislature did not lay down or even indicate any guiding principles to control the exercise of the discretion. There is no question of any discrimination between one

¹⁶ (1955) 2 SCR 925

person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction. If the Government gives sanction against one public servant but declines to do so against another, then the government servant against whom sanction is given may possibly complain of discrimination. But the petitioners who are complainants cannot be heard to say so, for there is no discrimination as against any complainant. It has to be borne in mind that a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the government and not in a minor official. Further, we are not now concerned with any such question. We have merely to see whether the court could take cognisance of the case without previous sanction and for this purpose the court has to find out if the act complained against was committed by the accused while acting or purporting to act in the discharge of official duty. Once this is settled, the case proceeds or is thrown out. Whether sanction is to be accorded or not is a matter for the government to consider. The absolute power to accord or withhold sanction conferred on the government is irrelevant and foreign to the duty cast on the court, which is the ascertainment of the true nature of the act.

(emphasis ours)

23. Turning to the words 'public servant' appearing in sub-section (1) of Section 197, Cr. PC, it has not been defined in the Cr. PC; however, what the words 'public servant' denote is found in Section 21, IPC and by reason of Section 2(y) of the Cr. PC, the meaning of 'public servant' as appearing in Section 197 thereof has to be understood in the light of its definition in Section 21, IPC. Section 21 of the IPC, to the extent relevant, reads thus:

21. "Public servant".—The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:—

Twelfth.—Every person—

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).

24. Although the respondent's initial appointment letter is not on record, it has not been disputed before us (in view of the additional documents placed on record by the respondent in terms of an order dated 18th March, 2025) that the respondent was initially appointed by the Government of Punjab. If not a member of the State's civil service, the respondent was most certainly the holder of a civil post. It is further undisputed that the respondent was sent on deputation to the Union Territory, Chandigarh from the State of Punjab (P.W.D P.H Branch). Also, it is not in dispute that *vide* an order of the Administrator, Union Territory, Chandigarh¹⁷ dated 25th February, 2005, the respondent was relieved to join a new assignment in the Municipal Corporation, Chandigarh. From time to time, the Governor of Punjab extended the deputation period of the respondent with the Municipal Corporation, Chandigarh. Orders dated 13th October, 2006 and 12th July, 2007 placed on record by the respondent evince extension of the deputation period of the respondent with the Municipal Corporation, Chandigarh by none other than the Governor of Punjab for specified periods. Effectively, what these orders did was to temporarily place the respondent's service at the disposal of the Municipal Corporation, Chandigarh. It has not been demonstrated before us by CBI that upon assignment of the respondent on deputation with the Municipal Corporation, Chandigarh, he was either absorbed in its services

¹⁷ Administrator

resulting in severance of relationship with the Government of Punjab or that, by any order validly made, the respondent ceased to remain a Government servant once he left the post under the Government he was serving prior to his deputation.

25. Moreover, clause (1) of Article 311 of the Constitution ordains that no authority subordinate to the appointing authority can dismiss or remove a member of the civil service of the State or a civil post holder. In case the respondent, while on deputation, were to commit a misconduct warranting either dismissal or removal, it has not been shown by referring to statutory rules that upon the respondent's assignment on deputation, disciplinary control over him stood transferred from any authority of the Government of Punjab to an authority of equal rank in the Municipal Corporation, Chandigarh and such authority had been empowered to take disciplinary action against the respondent. In the absence thereof, neither the Board of the Municipal Corporation, Chandigarh nor its Municipal Commissioner would have the authority or jurisdiction to take disciplinary action against the respondent had he misconducted himself while discharging his duty under such corporation.

26. This legal position is fortified by a recent decision of this Court in **A. Sreenivasa Reddy v. Rakesh Sharma**¹⁸ where a coordinate Bench has held that protection of sub-section (1) of Section 197, Cr. PC is available only to such public servants whose appointing authority is

¹⁸ (2023) 8 SCC 711

the Central Government or the State Government and not to every public servant.

27. We are of the considered opinion, having regard to the materials on record, that the respondent while rendering service for the State of Punjab as well as the administration of the Union Territory was a public servant covered by clause (a) of the 12th description in Section 21, IPC and despite his assignment on deputation to the Municipal Corporation, Chandigarh, he continued to remain a public servant for the purposes of sub-section (1) of Section 197, Cr. PC, being removable from office by an appropriate authority in the Government of Punjab and none else. We are afraid, no material which could persuade us to take a contrary view has been shown.

28. For the foregoing reasons, we find no reason to accept Mr. Raju's contention that the respondent ceased to be a public servant upon being sent on deputation first to the Union Territory, Chandigarh or when he was relieved by the Administrator for joining a new assignment in the Municipal Corporation, Chandigarh. The inevitable result is that the lead appeal and the connected appeal ought to fail.

29. Mr. Raju, sensing the Court's mind, requested for liberty being granted to seek sanction under Section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023, which has introduced the concept of deemed sanction.

30. In view of the provisions of Section 531 of the BNSS, the Cr. PC stands repealed; yet, pending proceedings are to be continued under the

repealed law. We, therefore, decline Mr. Raju's prayer. However, liberty to seek sanction under the Cr. PC, if so advised, is reserved.

31. While holding the impugned order to be correct, these appeals stand dismissed on the above terms.

.....J.
(DIPANKAR DATTA)

.....J.
(MANMOHAN)

NEW DELHI;
APRIL 22, 2025.