Urmila Devi Vs Yudhvir Singh

Court: Supreme Court of India

Date of Decision: Oct. 23, 2013

Acts Referred: Constitution of India, 1950 â€" Article 21, 22
Criminal Procedure Code, 1973 (CrPC) â€" Section 103, 107, 197, 197(1), 198(1)
Penal Code, 1860 (IPC) â€" Section 120B, 323, 34, 354, 389

Citation: (2013) 14 JT 262 : (2013) 4 RCR(Criminal) 899

Hon'ble Judges: T.S. Thakur, J; Fakkir Mohamed Ibrahim Kalifulla, J

Bench: Division Bench

Advocate: Rishi Malhotra, for the Appellant; Balram Gupta Manjeet Singh, Sudhir Bisla, Sanjit Singh and Nikhil Jain, for the Respondent

Final Decision: Allowed

Judgement

Fakkir Mohamed Ibrahim Kalifulla, J.
Leave granted.

2. This appeal at the instance of the complainant is directed against the judgment of the High Court of Punjab and Haryana at Chandigarh, in

Criminal Miscellaneous Petition No. 9585-M of 2008. The High Court, by the order impugned in this appeal, confirmed the order of the learned

Additional Sessions Judge, Panchkula dated 10.03.2008, in and by which, the learned Additional Sessions Judge reversed the orders of the

learned Chief Judicial Magistrate, Panchkula dated 30.07.2001 and 17.04.2007.

3. The brief facts, which are required to be stated are that the Appellant herein filed a complaint against the Respondent, alleging that the

Respondent threatened the Appellant and one Shri. R.C. Chopra that if they did not withdraw the complaint filed by them earlier as against one

Smt. Maya Rani, u/s 500 Indian Penal Code, both of them will not remain in service. By an order dated 30.07.2001, the learned Chief Judicial

Magistrate, Panchkula summoned the accused 1 to 10 and 12 to face the trial for the offences Under Sections 323, 354, 389, 452, 458, 500 and

506, read with Sections 34 and 120B of Indian Penal Code.

4. The first accused who is the sole Respondent herein, filed an application to recall the summoning order dated 30.07.2001. The said application

was dismissed by the learned Chief Judicial Magistrate by an order dated 04.07.2007, on the ground that the summoning order, which was passed

way back on 30.07.2001 and that recalling the order, would amount to reviewing of the order, which was not permissible in law.

5. The Respondent preferred a revision before the learned Additional Sessions Judge, who by an order dated 10.03.2008, while accepting the

revision, set aside both the orders dated 30.07.2001 and 17.04.2007, holding that in view of the bar enjoined u/s 197 Code of Criminal

Procedure, the Respondent herein who is a Sub-Divisional Magistrate, could not be summoned to face the trial. It is the said order of the learned

Additional Sessions Judge, which was the subject matter of challenge before the High Court and the High Court by the impugned order, declined

to interfere with the order of the learned Additional Sessions Judge, Panchkula.

6. We have heard Mr. Rishi Malhotra, learned Counsel for the Appellant and Dr. Balram Gupta, learned Senior Counsel for the Respondent.

7. The learned Counsel appearing for the Appellant contended that the learned Chief Judicial Magistrate had no power under the provisions of the

Code of Criminal Procedure to recall or review its own order summoning the accused, including the Respondent herein. There was no jurisdiction

in the learned Additional Sessions Judge, Panchkula to entertain the revision u/s 397 of Code of Criminal Procedure. According to the learned

Counsel, neither the order issuing summons to the Respondent dated 30.07.2001, nor the order dated 17.04.2007, or any other order, can be

challenged by way of revision u/s 397 of Code of Criminal Procedure. It was contended that both the orders viz., 30.07.2001, as well as

17.04.2007, were only interim orders and therefore, the bar u/s 397(2) of Code of Criminal Procedure would operate for the learned Additional

Sessions Judge to entertain the revision petition. The contention of the learned Counsel was that if at all the Respondent was aggrieved as against

the orders dated 30.07.2001 and 17.04.2007, he could have only approached the High Court u/s 482 of the Code of Criminal Procedure and not

by way of a revision u/s 397 of Code of Criminal Procedure.

8. It was also contended that since the sole issue raised before the learned Chief Judicial Magistrate, while seeking to recall the order dated

30.07.2001, was that the Respondent being a Sub Divisional Magistrate and the action complained of by the Appellant was in the course of

discharge of his functions as Sub Divisional Magistrate, the Appellant ought to have sought for the necessary sanction u/s 197 of the Code of

Criminal Procedure, before preferring a complaint before the learned Chief Judicial Magistrate. It was also contended that it would be a question,

which could have been gone into by the learned Trial Judge at the time of trial in as much as, according to the Appellant the manner in which the

Respondent and the other accused behaved in the house of the Appellant would be a relevant factor to determine the said question.

9. According to the Appellant, on 26.06.1997, Shri R.C. Chopra came to her house at about 09.30 P.M. to discuss about the evidence to be

adduced in the Court relating to the complaint filed by the Appellant, as against one Smt. Maya Rani in the Court of the learned Chief Judicial

Magistrate, Panchkula, that when they were discussing about the same, at the instance of the Respondent herein, the Tehsildar, the second

accused, DSP the third accused, ASI the fourth accused, Head Constable the fifth accused, along with accused No. 7 and 8 who were having

video cameras, forcibly entered the Appellant''s house in civil dress, woke up the children of the Appellant and questioned them with a view to

insult them in the presence of the children as to what R.C. Chopra was doing in her residence. It was further alleged that R.C. Chopra was

directed to pull down his clothes and while such activities were going on, the Appellant was pleading for mercy and the second accused directed

for a thorough search of the suitcase, trunks, almirah and the personal belongings of the Appellant and thus, created a nasty scene in her house. It

was alleged that Shri. R.C. Chopra and the Appellant were made to board a jeep brought by the third accused and were taken to the Civil

Hospital, Kalka, where the Appellant was forcibly examined by a male doctor and was also not allowed to contact her friends through telephone.

According to the Appellant, even though R.C. Chopra had an order of anticipatory bail granted by the learned Additional Sessions Judge, Ambala,

the first accused declined to abide by the said order and therefore, the Appellant had to prefer a complaint before the learned Chief Judicial

Magistrate, Panchkula. It was contended that the above conduct of the Respondent and other accused cannot be construed as one performed in

the course of discharge of their official duties and therefore, the learned Chief Judicial Magistrate, Panchkula rightly issued summons in the

complaint preferred by the Appellant and also declined to recall the same holding that once summons were issued, there was no power vested in

the Chief Judicial Magistrate to review his own order. Therefore, it was contended on behalf of the Appellant that the said order of the learned

Chief Judicial Magistrate, Panchkula being an interim order, revision u/s 397 Code of Criminal Procedure before the learned Additional Sessions

Judge was not maintainable and consequently, the order of the High Court in declining to interfere with the same is liable to be set aside and the

order of the learned Additional Sessions Judge dated 10.03.2008, is also liable to be set aside.

10. As against the above submissions, the learned senior Counsel appearing for the Respondent contended that this Court has held in innumerable

decisions that an order-issuing summons is not an interim order, but an intermediate order and therefore, the jurisdiction of the revisional Court u/s

397 of Code of Criminal Procedure was not ousted. It was also contended that in any event, when the inherent jurisdiction of the High Court was

invoked by the Appellant herself, the whole issue as regards the validity of the issuance of summons by the learned Chief Judicial Magistrate, which

was the subject matter of challenge was open, that the High Court could validly examine the correctness of the issuance of summons by the learned

Chief Judicial Magistrate and therefore no fault can be found with the order of the High Court impugned in this appeal.

11. The learned Counsel for the Appellant by relying upon the decisions in Adalat Prasad v. Rooplal Jindal and Ors. : (2004) 7 SCC 338; Bholu

Ram v. State of Punjab and Anr. : (2008) 9 SCC 140; N.K. Sharma v. Abhimanyu : (2005) 13 SCC 213 and uSbramanium Sethuraman v. State

of Maharashtra and Anr. : (2004) 13 SCC 324 contended that only the jurisdiction of the High Court u/s 482 Code of Criminal Procedure alone

could have been invoked, as against the order of the learned Chief Judicial Magistrate deciding to issue summons against the Respondent and not

by way of revision u/s 397 Code of Criminal Procedure.

12. The learned Counsel for the Respondent relied upon the decisions in K.K. Patel and Anr. v. State of Gujarat and Anr. reported in : AIR 2000

SC 3346 where the earlier decisions of this Court in Amar Nath and Ors. v. State of Haryana : (1977) 4 SCC 137; Madhu Limaye v. State of

Maharashtra : (1977) 4 SCC 551; V.C. Shukla v. State through CBI : 1980 2 SCR 380 and Rajendra Kumar Sitaram Pande and Ors. v. Uttam

and Anr. : AIR 1999 SC 1028 were followed, which was reiterated in Adalat Prasad (supra). Reliance was also placed upon the recent decision

of this Court in Dharimal Tobacco Products Ltd. and Ors. v. State of Maharashtra and Anr. reported in : AIR 2009 SC 1032

13. Having heard the learned Counsel for the Appellant, as well as the Respondent and having perused the orders of the learned Chief Judicial

Magistrate, Panchkula, the learned Additional Sessions Judge, Panchkula, as well as the judgment of the High Court impugned in this appeal, we

feel that the minute distinction as between the two sets of decisions dealing with the question as to whether the order issuing summons can be

construed as an interim order or an intermediate order on the one hand and what is the scope of challenging such an order by way of revision u/s

397 Code of Criminal Procedure needs to be highlighted. We feel that having regard to the above mentioned decisions, which dealt with the said

question, it has become imperative for this Court to give an authoritative pronouncement by reconciling the above decisions, which have dealt with

the jurisdictional issue raised u/s 397 Code of Criminal Procedure and the nature of the order and also as to how to construe an order passed by

the learned Judicial Magistrate, while deciding to issue summons to a party u/s 202 Code of Criminal Procedure.

14. In the decision in K.M. Mathew v. State of Kerala and Anr. reported in: (1992) 1 SCC 217 it was held that the order issuing the process is an

interim order and not a judgment and it can be varied or recalled. It was held in paragraph 8 that the fact that the process has already been issued

is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused. Here and now, we want

to make it abundantly clear that in the said decision, this Court did not examine the question about the reviseability of an order passed u/s 204

Code of Criminal Procedure, either by the Sessions Judge or by the High Court in exercise of its revisional jurisdiction u/s 397 Code of Criminal

Procedure. On the other hand in the decision in Rajendra Kumar Sitaram Pande (supra) this Court after referring to the earlier decisions in Amor

Nath (supra), Madhu Limaye (supra) and V.C. Shukla (supra) held as under in paragraph 6:

6....this Court has held that the term ''interlocutory order'' used in the Code of Criminal Procedure has to be given a very liberal construction in

favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be

attracted if the order was not purely interlocutory but intermediate or quasi final. This being the position of law, it would not be appropriate to hold

that an order directing issuance of process is purely interlocutory and, therefore, the bar under Sub-section (2) of Section 397 would apply. On the

other hand, it must be held to be intermediate or quasi final and, therefore, the revisional jurisdiction u/s 397 could be exercised against the same.

The High Court, therefore, was not justified in coming to the conclusion that the Sessions Judge had no jurisdiction to interfere with the order in

view of the bar under Sub-section (2) of Section 397 of the Code.

(Emphasis added)

15. This decision makes it clear that an order directing issuance of process is an intermediate or quasi final order and therefore, the revisional

jurisdiction u/s 397 Code of Criminal Procedure can be exercised against the said order. This view was subsequently reiterated by this Court in

K.K. Patel (supra). After making reference to the cases of Madhu Limaye (supra), V.C. Shukla (supra), as well as Rajendra Kumar Sitaram

Pande (supra), this Court laid down the test for finding out as to what order can be construed as an interim order in order to find out the

exercisability of the revisional jurisdiction u/s 397(2) of Code of Criminal Procedure. The said part of the order contained in Para 12 can be

usefully referred to which reads as under:

12....The feasible test is whether by upholding the objections raised by a party, would it result in culminating the proceedings, if so any order

passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2j) of the Code. In the present case, if the

objection raised by the Appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the

said standard, the order was revisable.

(Emphasis added)

16. A perusal of the above referred two decisions discloses that the reviseability of the order passed u/s 204 Code of Criminal Procedure either by

the Sessions Judge or the High Court, was never challenged and the decision that such an order is revisable u/s 397 Code of Criminal Procedure

therefore, continue to remain even as on date. It is also necessary to point out that the ratio of the decision in K.M. Mathew (supra) that the power

of the Criminal Court to review its own order passed u/s 204 Code of Criminal Procedure was inherent in the absence of any specific provision in

the Code of Criminal Procedure was referred for consideration by a larger Bench of three-Judge in the decision in Adalat Prasad (supra).

17. In fact, the said issue was referred to a larger Bench even in an earlier case of Nilamani Routray v. Bennett Coleman and Co. Ltd. reported in :

(1998) 8 SCC 594. However, the said case got settled out of Court and hence, the issue involved in K.M. Mathew (supra) was not decided by

the Larger Bench. The said issue was therefore, considered only in the case of Adalat Prasad (supra). This Court ultimately held that in the

absence of any review power or inherent power with the subordinate criminal Court, there was no jurisdiction or power vested in the Magistrate to

review or recall its order deciding to issue summons. It was however held that in the absence of any review power or inherent power in the

subordinate criminal Court, the remedy is by invoking Section 482 of Code of Criminal Procedure. Ultimately, in paragraph 17 of the Adalat

Prasad (supra), this Court held that it was not necessary for this Court to go into the question as to whether an order issuing process would amount

to interim order or not. Having regard to the scope of consideration made by this Court in Adalat Prasad (supra), the only question posed for

consideration was whether the Court, which decides to issue summons, did possess the power to review under the provisions of the Code of

Criminal Procedure or by way of exercise of its inherent power, where the question was ultimately answered to the effect that such power was

neither inherent in the Magistrate to decide to issue process, nor was there any statutory provision available either to recall or review such a

decision to issue process. Therefore, it has become incumbent upon this Court to make the position clear, as to how to construe an order passed

by a Magistrate in exercise of its power Under Sections 200 and 202 Code of Criminal Procedure when it decides to issue the process as against

the accused concerned and whether such an order could be the subject matter of challenge by way of revision u/s 397 Code of Criminal

Procedure.

18. At the risk of repetition, we make it clear that when the Larger Bench of this Court in Adalat Prasad (supra) considered the earlier law

declared by this Court in K.M. Mathew (supra), that there was neither inherent power nor statutory power either to recall or review the order

passed by the Magistrate to issue summons, the question which we have decided to examine was never considered and therefore, it would be

appropriate for this Court to decide as regards the nature of such an order and the scope of power and jurisdiction of the revisional Court

exercising jurisdiction u/s 397 Code of Criminal Procedure.

19. After the decision in Adalat Prasad (supra) wherein, the ratio in K.M. Mathew (supra) was reversed, the issue was once again considered by

the Larger Bench in Subramaniam Sethuraman (supra). After making reference to Adalat Prasad (supra), this Court has held in Subramaniam

Sethuraman (supra) as under in paragraph 19:

19. We see that this Court while dismissing earlier SLP as withdrawn had left the question of legality of the notice open to be decided at the trial.

Therefore, legitimately the Appellant should raise this issue to be decided at the trial Be that as it may, we cannot prevent an accused person from

taking recourse to a remedy which is available in law. In Adalat Prasad case we have held that for an aggrieved person the only course available to

challenge the issuance of process u/s 204 of the Code is by way of a petition u/s 482 of the Code. Hence, while we do not grant any permission to

the Appellant to file a petition u/s 482, we cannot also deny him the statutory right available to him in law....

(Emphasis added)

20. It has been virtually held that apart from the remedy available u/s 482, the aggrieved party can also workout the other remedies available in

law.

21. When we examine the said ratio laid down in Subramaniam Sethuraman (supra), considering the earlier view of this Court rendered in umpteen

number of judgments, including the one mentioned in K.K. Patel (supra), wherein a test was laid down to ascertain, which order can be construed

as an interlocutory order or intermediary order, it was held thereunder to the effect that the order deciding to issue summons would be only

intermediary or quasi final order, which would be subject to the revisional jurisdiction u/s 397 Code of Criminal Procedure.

22. Having regard to the said categorical position stated by this Court in innumerable decisions resting with the decision in Rajendra Kumar

Sitaram Pande (supra), as well as the decision in K.K. Patel (supra), it will be in order to state and declare the legal position as under:

(i) The order issued by the Magistrate deciding to summon an accused in exercise of his power Under Sections 200 to 204 Code of Criminal

Procedure would be an order of intermediary or quasi-final in nature and not interlocutory in nature.

(ii) Since the said position viz., such an order is intermediary order or quasi-final order, the revisionary jurisdiction provided u/s 397, either with the

District Court or with the High Court can be worked out by the aggrieved party.

(iii) Such an order of a Magistrate deciding to issue process or summons to an accused in exercise of his power u/s 200 to 204 Code of Criminal

Procedure, can always be subject matter of challenge under the inherent jurisdiction of the High Court u/s 482 Code of Criminal Procedure.

23. When we declare the above legal position without any ambiguity, we also wish to draw support to our above conclusion by referring to some

of the subsequent decisions. In a recent decision of this Court in Om Kumar Dhankar v. State of Haryana and Anr. reported in : (2012) 11 SCC

252 the decisions in Rakesh Kumar Mishra v. State of Bihar and Ors. reported in : (2006) 1 SCC 557 ending with Rajendra Kumar Sitaram

Pande (supra), was considered and by making specific reference to paragraph 6 of the judgment in Rajendra Kumar Sitaram Pande, this Court has

held as under in paragraph 10:

10. In view of the above legal position, we hold, as it must be, that revisional jurisdiction u/s 397 Code of Criminal Procedure, was available to the

Respondent No. 2 in challenging the order of the Magistrate directing issuance of summons. The first question is answered against the Appellant

accordingly.

24. Therefore, the position has now come to rest to the effect that the revisional jurisdiction u/s 397 Code of Criminal Procedure is available to the

aggrieved party in challenging the order of the Magistrate, directing issuance of summons.

25. With this when we proceed to examine the correctness of the orders impugned by the Appellant, we find that the High Court after examining

the facts in issue held that the initiative taken by the Respondent herein by directing the third accused along with the other official accused was in

exercise of his statutory power under the provisions of the Code of Criminal Procedure and, therefore, the requirement of the compliance of

Section 197 of Code of Criminal Procedure was paramount. The High Court, therefore, held that the conclusions of the learned Additional

Sessions Judge that the issuance of the summons by the Magistrate lacked in jurisdiction was correct and upheld the said order.

26. In order to appreciate the above conclusions reached by the learned Additional Sessions Judge as well as by the High Court and to examine

whether such a conclusion can be sustained it will be necessary to reiterate brief facts which culminated in the issuance of the summons to the

Respondent. The Appellant is a Pharmacist and is working in ESI dispensary situated in the premises of HMT Pinjore for the last about 20 years.

She is stated to have been living along with her two daughters and a son in an official accommodation allotted to her by the dispensary authorities in

Quarter"s No. 8-4, ESI Dispensary, HMT, Pinjore situated in the first floor. In the same premises one Maya Rani was living in the ground floor.

The Appellant is stated to have filed a complaint against the said Smt. Maya Rani u/s 500 Indian Penal Code alleging that she authored a letter

using objectionable and filthy language against the Appellant. The complaint of the Appellant was being enquired into by the learned Chief Judicial

Magistrate, Panchkula where Smt. Maya Rani and others were summoned to face the trial. According to the Appellant a day prior to the recording

of evidence before the learned Chief Judicial Magistrate on the complaint filed by the Appellant against Smt. Maya Rani (i.e.) on 26.6.1997 one

Shri R.C. Chopra visited the house of the Appellant, and that on that date at 10 pm a team consisting of ASI Onkar Singh, Head Constable Om

Prakash and two other persons with video cameras barged into the house of the Appellant in civil dress. The above said persons were stated to

have been followed by DSP Mrs. Rajshri Singh and that a little while later the Tehsildar along with the Respondent, who was the SDM Kalka, also

entered the Appellant"s house who directed the search of the Appellant"s house. It is the further case of the Appellant that the Respondent herein,

who was the Sub-Divisional Magistrate and who has been arrayed as accused No. 1, threatened the Appellant and Shri R.C. Chopra to withdraw

the case filed against Smt. Maya Rani pending before the Chief Judicial Magistrate, Panchkula. Based on the above allegations, the Appellant

preferred the complaint dated 30.07.2001 before the Chief Judicial Magistrate, in which the Respondent and the other accused were summoned

to face the trial for offences Under Sections 323, 354, 452, 458, 389, 500, 506 read with Sections 34 and 120B Indian Penal Code. The

Respondent filed an application for recalling the summoning order dated 30.07.2001 which was dismissed by the learned Chief Judicial Magistrate

on 04.07.2001 holding that the summoning order had been passed as early as on 30.07.2001 and recalling the same would amount to review of its

own order which was not permissible in law.

27. The Appellant also alleged that there was no occasion for the Respondent and other persons who accompanied him to forcibly enter her house

on the fateful night and question the relationship of the Appellant with R.C. Chopra. It was further alleged that Appellant and R.C. Chopra were

harassed by the police officials along with accused 7 and 8 who had come with video cameras which amounted to further harassment. According

to the Appellant, Mr. R.C. Chopra was forced to remove his clothes in front of other officials and that both of them were taken to the civil hospital

where the Appellant was examined by a male doctor, namely, Dr. S.K. Gupta and Dr. Dewan which was again not in consonance with law. In the

above stated background, it was contended that none of the acts complained of against the Respondent would amount to exercise of any powers

in his official capacity as SDM and, therefore, he could not have taken umbrage u/s 197 Code of Criminal Procedure. It was, therefore, contended

that the order of the learned Additional Sessions Judge and the confirmation of the same by the High Court in having held that for want of sanction

u/s 197 Code of Criminal Procedure the whole complaint of the Appellant was not maintainable was thoroughly illegal and the same is liable to be

set aside.

28. When we examine the above stand of the Appellant, it is necessary to note the relevant provisions under the Code of Criminal Procedure as

well as Indian Penal Code to find out whether it can be held that the act complained of against the Respondent and the various allegations relating

to him along with the other Respondents, some of whom were police officials, can be construed as one in exercise of his official duties or

responsibilities and thereby invocation of Section 197 Code of Criminal Procedure would be attracted.

29. Sub-section 4(b) of Section 3 of Code of Criminal Procedure specifically stipulated as to the functions exercisable by an Executive Magistrate

which reads as under:

3(4)(b) Which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning a

prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

The other relevant sections are Sections 20 to 23 of Code of Criminal Procedure which refers to Executive Magistrates, Special Executive

Magistrates, the local jurisdiction of Executive Magistrates and the subordination of Executive Magistrates.

30. As far as issuance of search warrants are concerned, it is governed by Sections 91 to 94 of the Code of Criminal Procedure. Section 93 of the

Code empowers a Court for issuance of warrant of search. However, such issuance of search warrant can be made only in respect of the

requirement and fulfillment of Section 91 or Sub-section 1 of Section 92. The only other provision relating to warrant of search or the power of

search by a Magistrate is provided u/s 103 which states ""any Magistrate may direct a search to be made in his presence of any place for the search

of which he is competent to issue a search warrant"". Apart from Section 103, u/s 107 an Executive Magistrate has been empowered to require a

person to show cause why he should not be ordered to execute a bond with or without sureties for keeping peace for such period, not exceeding

one year, as the Magistrate thinks fit. The said provision can be invoked by an Executive Magistrate only when he receives information that any

person is likely to commit a breach of peace or disturb public tranquility or to do any wrongful act that may probably occasion a breach of peace

or disturb public tranquility. In such situation if the Executive Magistrate is of the opinion that there is sufficient ground for proceeding then he

should issue a show cause notice and thereafter pass necessary orders, in order to ensure that no such apprehended breach of peace or

disturbance within his local jurisdiction is allowed to take place.

31. Keeping the above statutory provisions in mind when we examine the allegations leveled against the Respondent by the Appellant it transpires

that according to the Appellant based on a complaint preferred by Smt. Maya Rani alleging that the Appellant and one R.C. Chopra were living in

an illicit relationship, the Respondent directed the Tehsildar to enquire into the matter and also directed the DSP to conduct special investigation.

The Respondent is also alleged to have accompanied the investigation team along with two other persons, namely, accused 7 and 8 with video

cameras and carried out the search in the house of the Appellant. It is also alleged that the Respondent threatened the Appellant and R.C. Chopra

to withdraw the case filed against Smt. Maya Rani. The further allegation was that R.C. Chopra was made to strip off his clothes before others and

thereby he was humiliated and that both the Appellant and the said R.C. Chopra were forced to undergo a medical examination in the civil hospital

against their will.

32. In the first place, we wish to ascertain whether there was any semblance of an official act in whatever act in which the Respondent was alleged

to have been involved as complained of by the Appellant. In other words, it is necessary to examine and find out whether the Respondent alleged

to have exercised his official authority and power entrusted to him under the provisions of the Code of Criminal Procedure while claiming to have

acted as an Executive Magistrate for ordering searching operation of the premises of the Appellant and having issued certain directions to

physically examine the Appellant and Shri R.C. Chopra.

33. The various provisions which we have referred to above when examined with reference to the complaint alleged to have been lodged by Maya

Rani against the Appellant, we find that the said alleged offence if to be taken cognizance of could have fallen under any of the offences falling

under Chapter XX of Indian Penal Code. u/s 198(1) of the Code of Criminal Procedure it is specifically stipulated that no Court shall take

cognizance of an offence punishable under Chapter XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the

offence. Sub-section (2) further states that for the purpose of Sub-section (1), no person other than the husband of the woman shall be deemed to

be aggrieved by any offence punishable u/s 497 or Section 498 of the said Code and the proviso to the said section makes it clear that in the

absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave

of the Court, make a complaint on his behalf.

34. Under Chapter XX of the Indian Penal Code, Sections 493 to 498 have been set out. Section 493 relates to cohabitation caused by a man

deceitfully inducing a belief of lawful marriage. Section 494 relates to a person marrying again during the lifetime of husband or wife. Section 495

relates to the same offence with concealment of former marriage from a person with whom subsequent marriage is contracted. Section 496 refers

to marriage ceremony fraudulently gone through without lawful marriage. Section 497 is the offence relating to adultery and Section 498 relates to

enticing or taking away or detaining with criminal intent a married woman. Therefore, for all or any of the above offences falling Under Sections

493 to 498 Indian Penal Code in Chapter XX an aggrieved person can be either the husband or the wife and none else other than those who

would fall under the proviso to Sub-section (2) of Section 198 Code of Criminal Procedure.

35. In the circumstances when the offence complained of by Maya Rani is taken into account, we find that she cannot be held to be an aggrieved

person falling u/s 198(1) Code of Criminal Procedure or for that matter governed by the proviso to Section 198(2). There is no dispute that the

acts of the Respondent in having entered the house of the Appellant on 26.06.1997 pursuant to the complaint made by Smt. Maya Rani.

Therefore, if the said complaint of Smt. Maya Rani cannot validly form the basis for the Respondent to exercise his power and authority as an

Executive Magistrate/SDM, we are at a loss to understand as to through what other source, the Respondent acquired the power or was

empowered to barge into the house of the Appellant under the garb of an Executive Magistrate. Therefore, it cannot be held that the Respondent

validly exercised his authority as an Executive Magistrate when he acted based on the complaint of Smt. Maya Rani.

36. If there is no scope to bring the action of the Respondent u/s 198 Code of Criminal Procedure, the only other provision under which the

Appellant could have acted while ordering a search could have been only u/s 107 Code of Criminal Procedure. Indisputably the only allegation

which could be culled out from the facts pleaded was that the Respondent acted based on the complaint of Smt. Maya Rani. Section 107 relates

to breach of peace or disturbing the public tranquility or to do any wrongful act that may probably occasion a breach of peace or disturb the public

tranquility. When the simple allegation of Smt. Maya Rani against the Appellant was that the Appellant was having some illegal relationship with

R.C. Chopra in the premises in which the Appellant was residing, there is absolutely no scope for the Respondent to invoke Section 107 Code of

Criminal Procedure and contend that he acted by virtue of the authority vested in him under the said provision.

37. Therefore, when the above provisions pursuant to which the Respondent could have acted was not available to support the stand of the

Respondent, only other aspect to be examined is the conduct of medical examination on the Appellant and R.C. Chopra which according to the

Appellant was also not in consonance with the provisions of the Code. Under Sections 53 and 54 of Code of Criminal Procedure the scope of

holding a medical examination on an accused is provided for. u/s 53(1) when a person is arrested on a charge of committing an offence of such a

nature and alleged to have been committed under such circumstances that reasonable grounds for believing that an examination of his person will

afford evidence as to the commission of an offence, such medical examination can be carried out. As highlighted above, none of the offences falling

Under Sections 493 to 498 of Indian Penal Code could be related or proceeded against the Appellant or R.C. Chopra based on the alleged

complaint of Smt. Maya Rani.

38. That apart, the alleged medical examination was stated to have been conducted prior to the arrest of the Appellant and R.C. Chopra. The

provisions of the Code is clear to the pointer that a person suspected or accused of having committed an offence cannot be forcibly subjected to a

medical examination and in fact it can be stated that if police officers use force for that purpose the person aggrieved can lawfully exercise such

right of private defence to resist such force. The scope of medical examination provided for u/s 54 of Code of Criminal Procedure is that when a

person is arrested, he shall be examined by a medical officer in the service of Central or State Governments and in case he is not available, by a

registered medical practitioner soon after the arrest is made. Therefore, reading Sections 53 and 54 together, prior to the arrest of a person and in

the absence of any alleged offence which would require such medical examination there was no scope for anyone, much less for a person in the

capacity of an Executive Magistrate to order for a forcible medical examination.

39. The allegations complained of against the Respondent at the instance of the Appellant in the present proceedings if found to be true, the

resultant position would be, that the Respondent cannot be said to have legally acted in his official capacity as Executive Magistrate while ordering

for the search and inquiry by the Tehsildar, the DSP and the other police officers along with the two video cameramen. It is again relevant to keep

in mind that the only basis for the Respondent to act was the so called complaint of Smt. Maya Rani alleging that the Appellant was having illicit

relationship with R.C. Chopra. Assuming such an allegation of Smt. Maya Rani was true on its face value, we wonder, how a person in the rank of

an SDM took a decision to barge into the house of a lady, that too at the odd hours of 10 pm accompanied by a pose of police officers under the

guise of ascertaining the truthfulness or otherwise of such a complaint and for that purpose engage the services of two cameramen also with video

cameras. In our considered opinion such a behaviour of the Respondent as narrated in the complaint of the Appellant, if ultimately found to be true,

can only be held to be a high handed one bordering on indecency of the highest order, wholly abusing his status as SDM and can never be held to

have acted within the statutory framework of law.

40. At the risk of repetition it will have to be stated that when such an allegation could not have formed the basis for prosecution of an offence

falling u/s 198 Code of Criminal Procedure read along with the provisions contained in Chapter XX of the Indian Penal Code, none of the actions

alleged against the Respondent by the Appellant can be held to be one in which he acted in his capacity as the Executive Magistrate. We are

constrained to examine the above factors and steer clear of the factual position in order to state whether or not the conclusions reached by the

Additional Sessions Judge and the High Court in the orders impugned to the effect that the invocation of Section 197 Code of Criminal Procedure

became imperative before proceeding against the Respondent based on the complaint lodged by the Appellant.

41. In our considered opinion, having regard to our above conclusions, it will have to be held that the Respondent though might have been holding

the post of an Executive Magistrate, none of the acts alleged against him can by any stretch of imagination be held to have been carried out in his

capacity as an Executive Magistrate. When the said conclusion of ours based on the allegations set out in the complaint and noted by the Courts

below are inescapable, it will have to be held that invocation of Section 197 of Code of Criminal Procedure was wholly uncalled for and

consequently the impugned orders of the learned Additional Sessions Judge as well as the High Court cannot be sustained. Resultantly, the

summons issued by the learned trial Court dated 30.07.2001 and the order dated 17.04.2007 by which the Magistrate declined to recall the

issuance of summons on 30.07.2001 should stand restored. The appeal stands allowed with costs payable by the Respondent in a sum of Rs.

25,000/- (Rupees Twenty Five Thousand Only) to the Appellant.

42. Since, the complaint is of the year 2001, we only direct the trial Court to proceed with the hearing of the case on day to day basis and

conclude the same expeditiously preferably within three months from the date of production of copy of this order. We, however, make it clear that

whatever stated by us in this judgment is only for the purpose of examining the correctness of the judgment of the learned Additional Sessions

Judge and the High Court and we have not dealt with the merits of the case which shall be examined by the trial Court in accordance with law.

T. S. Thakur, J.

43. I have had the advantage of going through the order proposed by my esteemed and noble Brother Kalifulla 3. While I entirely agree with the

conclusions arrived at by His Lordship, I propose to add a few lines of my own.

44. The draft order has painstakingly and with remarkable lucidity dealt with the question of maintainability of a revision petition before the High

Court and concluded that such a revision petition was indeed maintainable. I can make no addition to what Kalifulla, J. has said on that count

except to place on record my deep appreciation for an articulate and erudite statement of the legal position on the subject. What has impelled me

to add to what is already said is the importance of the second issue that falls for our consideration touching the true and correct interpretation of

Section 197 of the Code of Criminal Procedure, 1973. Incidents of abuse of authority by public servants, despite several pronouncements of this

Court in which such abuse has been deprecated, and the effect which such abuse has on the confidence of the people in the Rule of Law to which

we are committed and the credibility of the institutions that are meant to preserve and nurture that confidence is what, in my opinion, calls for some

elaboration. There is no gainsaying that excesses by those vested with power and abuse of official position by those who hold public offices cannot

easily be eliminated, especially when respect for law is on the decline and enforcement machinery either insensitive or inadequate. Even when

complete eradication of such excesses and abuse may be a far cry, the mechanism for redressal against such abuse ought to be efficient. Absence

or failure of any such mechanism can lead to disturbing and in extreme cases disastrous consequences as was aptly prophesied by Lord Denning in

his first Hamlyn Lecture of 1949 under the title ""Freedom under the Law"" when he said:

No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do

things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the

remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and

shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the

winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for

negligence... This is not the task of parliament... The courts must do this. of all the great tasks that lie ahead this is the greatest. Properly exercised

the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this

country.

45. The above was said about civilized, highly developed countries with credible institutional backup. It is more so in the case of nascent

democracies around the world. Experience in this country has shown that excesses are often committed by those in power. This Court has in

several pronouncements expressed grave concern over the insensitivity of state authorities in protecting the basic rights of citizens and even gone to

the extent of laying down principles that would bind such authorities to act humanely in situations that keep recurring. of these decisions, cases

dealing with custodial violence stand out in bold relief where this Court has deprecated incidents of torture and other inhuman, cruel or degrading

treatment declaring such acts to be clear violations of citizens'' fundamental right to life guaranteed under Article 21 of the Constitution of India. For

instance in D.K. Basu v. State of West Bengal : (1997) 1 SCC 416 this Court came down heavily on custodial torture and resultant death when it

said:

...Custodial violence, including torture and death in the lock ups, strikes a blow at the Rule of Law, which demands that the powers of the

executive should not only be derived from law but also that the same should be limited by law..... It is aggravated by the fact that it is committed

by the persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a

police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law

enforcing officers is a matter of deep concern in a free society. These petitions raise important issues concerning police powers, including whether

monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Articles 21 and 22 of the

Constitution of India. The issues are fundamental.

xxx xxx xxx

...Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs

during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law

and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilised

nation can permit that to happen.

(Emphasis supplied)

46. The decisions of this Court in Smt. Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble and Anr. : (2003) 7 SCC 749 and Sube Singh v.

State of Haryana and Ors. : (2006) 3 SCC 178, among several other pronouncements, reiterate what was stated in D.K. Basu"s case (supra) and

declare in unequivocal terms that police excesses are not only impermissible in law but are in complete violation of citizens" rights and that such

excesses need to be dealt with effectively so that the confidence of the people in the Rule of Law and the institutions that are meant to uphold the

same is not shaken. A.S. Anand, J. as His Lordship then was, sounded a note of caution that unless stern measures are taken to check the malady

of the "fence eating the crop", the foundations of the criminal justice system would be shaken taking the country towards decay, anarchy and

authoritarianism. Speaking for the Court in State of M.P. v. Shyamsunder Trivedi and Ors. : (1995) 4 SCC 262 His Lordship observed:

Police excesses and the maltreatment of detainees/under- trial prisoners or suspects tarnishes the image of any civilised nation and encourages the

men in "Khaki" to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken

to check the malady of the very fence eating the crops, the foundations of the criminal justice delivery system would be shaken and the civilization

itself would risk the consequence of heading, towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts

must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to

gradually lose faith in the efficacy of the system of judiciary itself, which, if it happens, will be a sad day, for any one to reckon with.

47. A reference may also be made to State of Punjab v. Baldev Singh, etc. : AIR 1999 SC 2378 where this Court held that legitimacy of judicial

process may itself come under cloud if this Court were seen to be condoning acts of lawlessness conducted by the investigating agency during

search operations which may in turn undermine respect for law and compromise the administration of justice. In State of Maharashtra and Ors. etc.

v. Saeed Sohail Sheikh etc. : AIR 2013 SC 168 this Court had another occasion to emphasise the importance of the Rule of Law and to declare

that police excesses, whether inside or outside the jail could never be countenanced in the name of maintaining discipline or dealing with anti-

national elements. Accountability, observed this Court, was one of the facets of the Rule of Law and anyone found to have acted in breach of law

could be punished for any such breach. This Court observed:

In a country governed by the rule of law police excesses whether inside or outside the jail cannot be countenanced in the name of maintaining

discipline or dealing with anti-national elements, Accountability is one of the facets of the rule of law. If anyone is found to have acted in breach of

law or abused his position while exercising powers that must be exercised only within the parameters of law, the breach and the abuse can be

punished. That is especially so when the abuse is alleged to have been committed under the cover of authority exercised by people in uniform. Any

such action is also open to critical scrutiny and examination by the Courts. Having said that we cannot ignore the fact that the country today faces

challenges and threats from extremist elements operating from within and outside India. Those dealing with such elements have at times to pay a

heavy price by sacrificing their lives in the discharge of their duties. The glory of the constitutional democracy that we have adopted, however, is

that whatever be the challenges posed by such dark forces, the country''s commitment to the Rule of Law remains steadfast. Courts in this country

have protected and would continue to protect the ideals of the rights of the citizen being inviolable except in accordance with the procedure

established by law.

48. We have referred to the pronouncements of this Court only to show that excesses by those in authority affect not only the immediate victims

who suffer them, but should such excesses go unnoticed and unpunished, they have a more pernicious effect in that they tend to erode the Rule of

Law, violate fundamental rights and shake the faith and the confidence of the people in the efficacy and the credibility of the institutions that are

meant to protect the citizens against them and eventually lead to catastrophic results like anarchy and the return of dark days of barbarism.

49. It is in the above backdrop that we need to examine the question that falls for determination in the present case which is in essence yet another

case accusing the functionaries of the State machinery of highhanded, insensitive and unwarranted acts of misbehavior, that the same constitute

offences punishable under the Indian Penal Code. The question precisely is whether sanction u/s 197 of the Code of Criminal Procedure was

necessary for prosecuting the Respondent public servant who is alleged to have acted without the authority of law and without any lawful

justification, harassed the complainant, violated her right to privacy, and subjected her to an unwarranted public humiliation in -

(a) having entered the house of the complainant-Urmila Devi after sunset equipped, as it were, with video cameras;

(b) having asked Mr. R.C. Chopra who was present in the house of the complainant to undress;

(c) having taken the complainant and Mr. Chopra to the Police Station without any reasonable cause and without disclosing to them the offence for

which they were being forced to do so;

(d) having subjected them to medical examination without their consent and without there being any cause whatsoever for such an examination;

(e) having threatened them with dire consequences if the complainant did not withdraw the complaint filed by her against one Maya Rani.

50. The High Court has taken the view that the prosecution launched by the Appellant against the Respondent was legally impermissible without

the sanction of the State Government. That view has been assailed before us primarily on the ground that the Respondent was neither acting nor

could be said to be acting in the purported discharge of his official duty so as to entitle him to the protection of Section 197, Code of Criminal

Procedure which to the extent the same is relevant for our purposes reads as under:

197. Prosecution of Judges and public servants.-

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the

Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty,

no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection

with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection

with the affairs of a State, of the State Government.

(2) xxx

(3) xxx

(4) xxx

51. A careful reading of the above would show that protection against prosecution will be available only if the following ingredients are satisfied:

(a) The person concerned is or was a judge or magistrate or public servant.

(b) Such person is not removable from his office save by the sanction of the Government.

(c) Such person is accused of commission of an offence and

(d) Such offence is committed while the person concerned was acting or purporting to act in the discharge of his official duties.

52. There is in the instant case no dispute that the first three of the four requirements set out above are satisfied inasmuch as the Respondent public

servant was not removable from the office held by him save by or with the sanction of the Government and that he is accused of the commission of

offences punishable under the Indian Penal Code. What constituted the essence of the forensic debate at the bar was whether the offences

allegedly committed by the Respondents were committed while he was ''acting or purporting to act in the discharge of his official duty''. The words

acting or purporting to act in the discharge of his official duty"" appearing in Section 197 (supra) are critical not only in the case at hand but in every

other case where the accused invokes the protection of that provision. What is the true and correct interpretation of that provision is no longer res

integra. The provision has fallen for consideration on several occasions before this Court. Reference to all those decisions may be unnecessary for

the law has been succinctly summed up in the few decisions to which we shall presently refer. But before we do so we may point out that the

expression ""official duty"" appearing in Section 197 has not been defined. The dictionary meaning of the expression would, therefore, be useful for

understanding the expression both literally and contextually. The term ""official"" has been defined in Black''s Law Dictionary as under:

Official... Of or relating to an office or position of trust or authority .

53. The term ""office"" is defined in the same dictionary as under:

Office: A position of duty, trust, or authority, esp. one conferred by a governmental authority for a public purpose of attorney office general.

54. Law Lexicon also gives a similar meaning to the expression ""official"" and ""office"" as under

Official...As adjective, belonging to an officer: of a public officer; in relation to the duties of office.

Office...The word ""office"" refers to the place where business is transacted.

55. The term ""duty"" is defined by Black"s Law Dictionary in the following words:

Duty. 1. A legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a

corresponding right.

56. The expression ""official duty"" would in the absence of any statutory definition, therefore, denote a duty that arises by reason of an office or

position of trust or authority held by a person. It follows that in every case where the question whether the accused was acting in discharge of his

official duty or purporting to act in the discharge of such a duty arises for consideration, the Court will first examine whether the accused was

holding an office and, if so, what was the nature of duties cast upon him as holder of any such office. It is only when there is a direct and

reasonable nexus between the nature of the duties cast upon the public servant and the act constituting an offence that protection u/s 197 Code of

Criminal Procedure may be available and not otherwise. Just because the accused is a public servant is not enough. A reasonable connection

between his duties as a public servant and the acts complained of is what will determine whether he was acting in discharge of his official duties or

purporting to do so, even if the acts were in excess of what was enjoined upon him as a public servant within the meaning of that expression u/s

197 of the Code. We are supported in that view by the decision of this Court in P. Arulswami v. State of Madras : AIR 1967 SC 776 where a

three-Judge bench of this Court held:

It is not therefore every offence committed by a public servant that requires sanction for prosecution u/s 197(1) of the Code of Criminal

Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is

directly concerned with his official duties so that if questioned, it could be claimed to have been done by virtue of the office, then sanction would be

necessary...It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable.

(Emphasis supplied)

57. The legal position was further elaborated and explained by another three Judge Bench decision of this Court in B. Saha and Ors. v. M.S.

Kochar : (1979) 4 SCC 177 where this Court held that while Section 197 Code of Criminal Procedure was capable of both liberal and narrow

interpretations, a moderate and balanced approach was the correct way to interpret that provision to avoid an unfair advantage or disadvantage to

the accused. This Court, therefore, evolved the test of a ""direct and reasonable"" connection between the official duty of the accused and the acts

constituting the commission of offence. The Court observed:

The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty"" employed in

Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will

be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will

take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed

or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every

offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1),

an Act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution and the said provision.

(Emphasis supplied)

58. The law was reviewed once again by this Court in General Officer Commanding etc. v. CBI and Anr. etc. : (2012) 6 SCC 228 where this

Court relying upon the decisions in P. Arulswami and B. Saha"s cases (supra) summed up the legal position in the following words:

The protection given u/s 197 Code of Criminal Procedure 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. 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 done 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. 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 Code of Criminal Procedure cannot be disputed.

(Emphasis supplied)

59. The test of direct and reasonable connection between the official duty of the accused and the acts allegedly committed by them is, therefore,

the true test to be applied while deciding whether the protection of Section 197 of the Code of Criminal Procedure is available to a public servant

accused of the commission of an offence. The High Court has not adverted to this test nor has it held that there existed a direct and reasonable

connection between the official duty being discharged by the accused public servant and the acts committed by him. The High Court has on the

contrary misdirected itself when it said that the accused had only committed an act of omission towards his official duties which entitled him to the

protection of Section 197 of the Code, The High Court observed:

After going through the facts of the above case, one thing is clear that there was an on-going rift between Smt. Maya Devi and Smt. Urmila Devi.

They are both quarrelsome in nature and have been instigating each other on a number of occasions. On a complaint made by Smt. Maya Devi,

who is a widow, inquiry was conducted by Tehsildar who concluded that Smt. Urmila Devi was residing with Shri R.C. Chopra without being

legally wedded to him. To verify this fact the SDM had referred an inquiry to the DSP. In pursuance to this, a team had visited the house of Smt.

Urmila Devi at 10:00 P.M. led by DSP Mrs. Rajshri Singh, ASI Onkar Singh and HC Om Parkash to verify the contents of the complaint made

by Maya Devi. Shri R.C. Chopra was found residing with Smt. Urmila Devi. They were medically examined. No case was registered and they

were not arrested. In a complaint by Maya Rani it was alleged that a divorce petition was pending between Shri R.C. Chopra and his wife Savitri.

Shri R.C. Chopra and Smt. Urmila Devi had given false statements to the police in investigation that they did not know each other at all. The

allegation that the SDM was present when the investigation team visited the house is not being denied. After marking an inquiry, SDM was ceased

of the complaint and his presence at best can be an act of omission towards his official duty. It cannot be said that his presence was not in the

course of his service. The allegation in the complaint that he harassed the complainant Smt. Urmila Devi and Shri R.C. Chopra when the

investigating team was doing their work can at best be termed as act of omission while doing official duty.

60. It is difficult to appreciate what the High Court meant by saying that the acts of the accused were ""at best acts of omission towards official

duty"". It was not the case of the Respondent before the High Court nor is it his case before us that the complaint filed by Maya Devi disclosed any

offence which could be taken cognizance of by him as an Executive Magistrate or investigated by the police. Assuming that the complainant and

R.C. Chopra were living together even when they were not married to each other, the complaint regarding any such relationship could be filed only

by the wife of R.C. Chopra, or the husband of the complainant-Urmila Devi. The complaint filed by Maya Devi could not provide a valid basis for

the SDM, the Tehsildar or the Deputy Superintendent of Police concerned to barge into the house of the complainant, humiliate or harass her or

drag her to the police station without the registration of any case or subject her to an uncalled for medical examination. The test of direct and

reasonable connection between the official duty of the Respondent Sub Divisional Magistrate and the police officers concerned and the acts

complained of thus fails in the present case especially because there is not even a semblance of a lawful justification forthcoming from the

Respondent for what he did. Entering the house of a woman, after sunset with a posse of police force, carrying video cameras conducting an

unwarranted search of the house, humiliating and invading the privacy of the complainant, insulting and humiliating R.C. Chopra by asking him to

undress and dragging both of them to the police station for medical examination against their wishes, especially when male doctors were asked to

examine the complainant which added insult to injury, all remain unsupported by any lawful justification and have no connection with the duties that

were cast upon the Respondent as a public servant, even if a complaint alleging an adulterous relationship between the Appellant and R.C. Chopra

had been received by the SDM. The alleged acts of the Respondent cannot, therefore, be said to be in discharge of his official duties or in the

purported discharge of such duties. Public functionaries cannot under the cloak of purported discharge of official duties resort to harassment and

humiliation of the citizens on the pretext of a complaint having been received by them, especially when the same does not disclose the commission

of any offence triable by the Executive Magistrate or cognizable by the police; nor was there any other proceeding in connection with which such

conduct could be justified in law. The plea of the Respondent that the prosecution was barred u/s 197 Code of Criminal Procedure has, therefore,

to be rejected.

61. With the above observations, I agree that the appeal be allowed with the directions contained in the order proposed by my esteemed

Colleague Kalifulla, J.