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BOMBAY HIGH COURT (AURANGABAD BENCH)

Case No: Criminal Writ Petition No. 1472 of 2015

Manoj Prabhakar Lohar	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision: Nov. 24, 2016

Acts Referred:

- Bombay Police Act, 1951 - Section 161(1)
- Criminal Procedure Code, 1973 (CrPC) - Section 227, Section 482, Section 482
- Penal Code, 1860 (IPC) - Section 364A

Citation: (2017) 1 AIRBomRCri 417 : (2017) 1 BomCR(Cri) 417 : (2017) MCR 303

Hon'ble Judges: Ravindra V. Ghuge, J.

Bench: Single Bench

Advocate: Shri R.S. Deshmukh, PP, for the Petitioner; Shri A.B. Girase a/w Shri S.P. Sonpawale, APP, for the Respondent No. 1; Shri P.D. Bachate, Advocate, for the Respondent No. 2

Final Decision: Dismissed

Judgement

Ravindra V. Ghuge, J. (Oral) - Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner in this petition has invoked Section 482 of the Criminal Procedure Code ("CrPC") along with Article 227 of the Constitution of India for examining the legality, validity and the propriety of the impugned order dated 29.10.2015 passed below Exhibit 84 with a further prayer that the said application Exhibit 84 be allowed by quashing the impugned order. It is further prayed that the proceedings in Sessions Case No.131 of 2012 be quashed and set aside as the same have been lodged without there being a valid sanction. He, therefore, has prayed for discharge.

3. For the sake of clarity, the substantial prayers put-forth under Clauses (a) and (b) in the petition are reproduced as under:-

"(a) that this Hon''ble Court may be pleased to call for the records and proceedings concerning Sessions Case No.131 of 2012 from the Sessions Court at Jalgaon and after examining the legality, validity and/or propriety of the impugned order dated 29.10.2015, passed below Ex.84, may be pleased to quash and set aside the same;

(b) that this Hon''ble Court maybe pleased to call for the records and proceedings concerning Sessions Case No.131 of 2012 from the Sessions Court at Jalgaon and after examining the legality, validity and/or propriety of the petitioner being prosecuted in the said case without there being a valid sanction, may be pleased to quash and set aside the prosecution against the petitioner; "

It is apparent from the pleadings and the prayers that the petitioner is praying for discharge only on the ground of there being no ''valid sanction''.

4. The petitioner had moved an application Exhibit 84 before the learned Sessions Court, praying for discharge under Section 227 of the CrPC, from the offences which have been registered by the Chalisgaon Police Station vide Crime No.145 of 2009 in Sessions Case No.131 of 2012. By the impugned order dated 29.10.2015, the application filed by the petitioner, who is accused No.1, has been rejected. Being aggrieved by the same, the petitioner is before this Court.

5. Shri Deshmukh, the learned Advocate for the petitioner has strenuously and extensively canvassed his case, which can be summarized as follows :-

(a) Whether a revised sanction is valid?

(b) Whether Section 364-A of the Indian Penal Code ("IPC") could be attracted in this case ?

(c) Section 161 of the Maharashtra Police Act protects the petitioner against prosecution if the sanction to the prosecution has been granted after two years of the registration of the First Information Report ("FIR").

(d) The alleged incident at issue is said to have occurred on 30.6.2009 and 1.7.2009.

(e) An FIR was registered against the petitioner on 16.7.2009, under Sections 347, 364A, 385 read with 34 of the IPC.

(f) The first sanction was granted under Section 197 of the CrPC on 4.10.2011 for prosecuting the petitioner.

(g) On 28.5.2012, a revised sanction was accorded by the competent authority after the first sanction was cancelled.

(h) A charge sheet is filed on 19.6.2012.

(i) There is no challenge to the authority vested in the officer who had granted the first sanction and who has granted the second sanction.

(j) The report of the District Superintendent of Police, Jalgaon addressed to the Director General of Police, Maharashtra, dated 4.7.2009, does not mention Section 364A of the IPC and as such, Section 364A of the IPC was not attracted in the instant case.

(k) The revised sanction was challenged in Writ Petition No.2252 of 2012 before the learned Division Bench of this Court.

(m) By order dated 26.11.2014, the request of the petitioner to withdraw the petition, in the light of **Dinesh Kumar v. Chairman, Airport Authority of India [AIR 2012 (5) SC 858**, was accepted and the petition was disposed off, with liberty to approach the trial Court for discharge.

(n) Though all contentions were raised before the trial Court, it has failed to consider them and has brushed aside those contentions by concluding that the issue of validity of the sanction under Section 197 is a subject matter of trial, inasmuch as the effect of Section 161 of the Bombay Police Act was also not considered.

(o) Unless the sanction is valid under Section 197 of the CrPC, the prosecution cannot be permitted to proceed with the trial with an invalid sanction.

(p) In so far as the second sanction is concerned, whether the revised sanction is sustainable in the absence of any fresh material, needs to be considered. (Paragraphs 12 & 13 - **L. Megha Naik v. State of Karnataka, CDJ 2015 Kar 300** and **State of Punjab v. Mohd. Iqbal Bhatti - 2010 Cri.L.J.1436**).

(q) When the material available before the Sanctioning Authority led to the first sanction, the second sanction could not have been granted, without any fresh material available.

(r) No fresh material was available for enabling the authorities to set aside the first sanction and issue a revised sanction.

(s) The judgment of the Honourable Supreme Court in the matter of K.K.Patel (supra) prohibits prosecution of a Police Officer if the act complained off has occurred more than two years prior to the sanction and if the said act was not under the colour of any duty or authority (Section 161 of the IPC).

(t) Though the FIR contains Section 364A, the said Section was sought to be deleted by the Investigating Officer by moving an application on 9.10.2009 before the learned Judicial Magistrate (FC), Chalisgaon, stating therein that as the High Court has passed an order dated 5.9.2009 in Criminal Application No.2786 and 2766 of 2009, Section 364A is sought to be deleted considering the observations of this Court.

(u) This Court had never made any observation that Section 364A deserves to be deleted.

(v) The Supreme Court by it''s order dated 24.1.2011, set aside the order of this Court and observed that the petitioner ought not to have been granted anticipatory bail.

(w) A statement was made on behalf of the State that the Police investigating the matter have found that Section 364A of the IPC is not attracted and the petitioner is being prosecuted under other provisions.

(x) Taking the shelter of the order of the Honourable Supreme Court, the second sanction order has been passed on 28.5.2012, thereby granting sanction under Section 197 by including Section 364A.

(y) Such a second sanction could not have been granted without there being additional material.

(z) Only if additional material is available and the same is convincing, then the Sanctioning Authority could have passed the second sanction order.

(aa) The supplementary statement recorded by Digambar Mali on 31.10.2011 does not constitute additional material.

(ab) Similarly, a fresh statement of the complainant Dr. Uttamrao Dhanaji Mahajan, dated 25.2.2011, would not constitute fresh or additional material.

(ac) The statement of the son of the complainant Dr. Manoj Uttamrao Mahajan, dated 25.10.2011, also does not amount to fresh or additional material.

(ad) The statement of Kedarsing Dharma Patil, recorded on 25.10.2011 would not amount to fresh material.

(ae) Similarly, those statements which were recorded on 25.10.2011 and thereafter on 31.10.2011, do not amount to fresh material or additional material so as to conclude that there was new material available before the Sanctioning Authority.

(af) The comparative chart indicating material before the Sanctioning Authority as on the first sanction dated 4.10.2011 and the material as on the second sanction dated 28.5.2012, was placed before the trial Court which has been discarded by the trial Court on the ground that this material can be considered only at the stage of the trial.

(ag) Four issues have been formulated by the petitioner on page No.10 of the memo of the petition, which are being placed before this Court, on the basis of which, the petitioner seeks discharge. They are as under:-

"(a) Can trial as against the petitioner be proceeded with in the absence of there being a valid sanction?

(b) Can an order of sanction which according to the Respondent is valid be revised?"

(c) What are the circumstances under which an order of sanction already granted and/or refused be revised?

(d) Whether offence under Section 364A of IPC can be said to have been made out in the facts and circumstances of the case when it is not even the case of the prosecution that any act was committed demanding ransom and the demand for ransom was not by holding out a threat of causing death or hurt?"

(ah). Reliance is placed upon the following judgments in support of the case of the petitioner:-

(i) **State of Himachal Pradesh v. Nishant Sareen - (2010) 14 SCC 527**

(ii) **L. Megha Naik v. State of Karnataka - CDJ 2015 KAR HC 300**

(iii) **State of Punjab v. Mohammad Iqbal Bhatti - 2010 CRI L.J. 1436**,

(iv) **Philips Fadrick Dsouza and others v. State of Maharashtra - 2009 (1) Bom. C.R. (Cri.) 38**,

(v) **Vishwanath Gupta v. State of Uttaranchal - (2007) 11 SCC 633**,

(vi) **Mehta Alam Lalai Choudhari v. Maharashtra State Criminal Appeal No.107 of 2006, decided on 8.8.2012**

(vii) **Raja Hiralal Yadav v. Maharashtra State - Criminal Appeal No. 704 of 2010, decided on 12.11.2013**,

(viii) **V. Venkat Subbarao v. State of A.P. - 2007 CRI L.J. 754**,

(ix) **Thulia Kali v. State of Tamil Nadu - 1972 CJ (SC) 556**,

(x) **Kishan Singh v. Gurpal Singh and others - 2010 ALL MR CRI 3948**,

(xi) **K.K.Patel v. State of Gujrat and others - 2000 (2) ALL MR (Cri) 132**

(xii) **Mansukhlal Vithaldas Chauhan v. State of Gujarat - 1977 CJ (SC) 803**,

(xiii) **Abdul Wahab Ansari v. State of Bihar and another - 2000 Cri.L.J.4631**,

(xiv) **Om Prakash and others v. State of Jharkhand - (2012) 12 SCC 72**,

(xv) **P.K.Choudhury v. Commander, 48 BRTF (GREF) - (2008) 13 SCC 229**,

(xvi) **Nanjappa v. State of Karnataka - 2015 AIR (SC) 3060**,

(xvii) **Rajesh Nashir Dongarde v. State of Maharashtra - Criminal Appeal No.363 of 2002, decided on 23.3.2016**,

(xviii) **Sandeep Rammilan Shukla v. State of Maharashtra - 2008 (2) Bom. C.R. (Cri.) 799**,

6. The added respondent No.2, namely, Dr. Uttamrao Mahajan, who is the original complainant against the petitioner, has been added after he sought intervention in this matter on the ground that he is a party to the proceedings before the trial Court and upon the consent of the petitioner. Shri Bachate, learned Advocate for the said complainant/Respondent No.2 has strenuously canvassed his case, which can be summarized as under:-

(a) A Complaint (undated) by Purushottam Vallabbhai Patel is said to have been tendered before the petitioner, who at the relevant time was an Additional Superintendent of Police, Chalisgaon, alleging that the complainant has not paid his legal dues for the construction work performed by him.

(b) Despite assurances and despite the entire construction having been carried out, the complainant Dr. Mahajan has avoided making the payment of Purushottam Patel and is trying to deprive him of the money, which Dr. Mahajan is liable to pay.

(c) This was the only complaint tendered in the office of the petitioner.

(d) The petitioner is, for self serving purposes, branding the said letter to be a complaint, which clearly indicates that no cognisable offence has been made out.

(e) No cognisable offence has been made out against the complainant/respondent No.2.

(f) Dr. Mahajan, the complainant, has narrated in details in his earlier statement as well as in his supplementary statement that the petitioner had deputed a Sub-Inspector of Police by name Shri Nimbalkar, who intercepted the complainant on 30.6.2009 at 11.00 a.m. near his hospital, when he was accompanied by Kedarsing Dharma Patil, Ishwar Jadhav, Ramesh Shimpi and Sajan Kautik Patil, who were preparing to attend the meeting/sabha of the President of the Indian National Congress Party.

(g) The said Inspector forced the complainant to sit on the motorcycle and accompany him to the office of the petitioner since the petitioner had directed Shri Nimbalkar to bring Dr. Mahajan to his office.

(h) The details about the manner in which the petitioner abused and threatened the complainant are set out in his statement.

(i) Foul language and the abusive words that were used, were also mentioned in the said statement.

(j) The petitioner threatened him that he would register offences against him unless he paid the entire amount to Shri Patel and also paid Rs. Sixty Lakhs to the petitioner.

(k) The complainant pleaded to the petitioner to be merciful considering that he had suffered two heart attacks and had recently undergone an angioplasty at the Ruby

Hospital.

(l) The details about how the complainant was threatened and was kept in illegal confinement and as to how the petitioner demanded huge amounts as ransom so as to settle the issue and avoid registering any offence, are all stated in the said complaint.

(m) Similarly statements have been recorded by the son of the complainant and other persons, who are witnesses.

(n) The ingredients under Section 364A are found in the statements recorded by the complainant, his son, Digambar Mali (father-in-law) and Kedarsing Dharma Patil.

(o) This Court, by it''s order dated 5.9.2009, while granting bail to the petitioner had erroneously observed that the material available was not germane to constituting the offence under Section 364A of the IPC.

(p) Based on such observations, the Investigating Officer thought that Section 364A would not be attracted, and hence, moved the application dated 9.10.2009 for seeking deletion of Section 364A, which was already mentioned in the FIR.

(q) Thereafter, since the Honourable Supreme Court, while delivering it''s order dated 24.1.2011 had concluded that the order of this Court dated 5.9.2009 was completely unjustified, the sanctioning authority was moved so as to obtain sanction to the prosecution of the petitioner, even by mentioning Section 364A.

(r) The supplementary statements recorded by the complainant and other persons referred to above, would clearly indicate that the material with regard to threat to life was available. The offence of kidnapping, demanding ransom and the threat to life, if ransom is not paid, are all found in the supplementary statements. This material was available before the sanctioning authority, which has granted the sanction.

(s) Reliance is placed upon the following judgments:-

(i) **Shri S.K.Zutshi and another v. Bimal Debnath and another - 2005(1) Bom. C.R. (Cri.) 242**,

(ii) **Chaudhary Sultana v. State of West Bengal and another - 2009 AIR (SC) 1404**,

(iii) **Inspector of Police v. Battenapatla Venkata Ratnam - 2015 ALL M.R. (Cri.) 2064**,

(iv) **Dinesh Kumar v. Chairman, Airport Authority of India - 2012 AIR (SC) 858**,

(v) **Parkash Singh Badal v. State of Punjab and others - 2006 (13) Scale 54**,

(vi) **State of Maharashtra v. Atma Ram - 1966 AIR (SC) 1786**,

(vii) **Mohan Rathod and others v. State of Maharashtra - 1985 (2) Bom. C.R. 633**,

(viii) **State of Maharashtra v. Mahadeo Giri and others - 2007 BCI 225**,

(ix) **Kashinath Laxmanrao Marwalikar v. State of Maharashtra - 2002 Bom. C.R.(Cri.) 338**,

(x) **Shobha Bawane v. State of Maharashtra - 2015 (2) Bom. C.R. (Cri.) 288** and

(xi) **Uttamrao Mahajan v. Manoj Lohar - Special Leave Petition to Appeal (Cri.) Nos.9376-9377/2012**.

(t) Considering the ratio laid down in the Parkash Singh Badal case (supra), whether sufficient material was available to render the sanction legal and valid, will have to be considered at the time of the trial.

(u) The sanction granted need not mention specific sections since the sanction is aimed at permitting the prosecution of a public servant in the light of the FIR registered against him.

(v) If the view taken by the Honourable Apex Court in the matter of Choudhari Parveen Sultana (supra) and Inspector of Police (supra) are considered, acts committed by a public servant, which are not in the course of his duties or while discharging his official duties, would dis-entitle him to the protection of Section 197 and as such, whether the sanction has been rightly granted or not, will have to be considered at the time of the trial.

(w) The sanctioning authority is not required to separately specify each of the offense against the accused public servant and this is required to be done at the stage of framing of the charge, which would occur when the trial has commenced.

(x) The law mandates that there should be material available before the sanctioning authority while granting the sanction and whether the sanctioning authority has rightly considered the material available and whether there is proper application of mind, will have to be considered by the trial Court during the trial.

7. The learned Public Prosecutor Shri Girase, appearing on behalf of the State-respondent No.1, while adopting the submissions of Shri Bachate, submits in addition thereto as under:-

(a) While entertaining this petition, this Court cannot travel beyond the prayers set out by the petitioner in the light of the four grounds putforth.

(b) The petitioner has framed four issues/grounds in the light of his contentions, which have been reproduced on page No.10 of the memo of the petition. Only these grounds have to be considered by this Court.

(c) It is conceded by the petitioner in paragraph No.3 of the petition that there is no controversy as regards the legal position that an order of sanction being an administrative order, can certainly be reviewed, though such review is sustainable and justified only if there is additional material available (**State of Himachal**

Pradesh v. Nishant Sareen (2010) 14 SCC 527).

(d) As such, keeping in view the law laid down by the Honourable Apex Court, whether the sanctioning authority has validly issued the sanction order, is to be considered and scrutinized during the trial and not at this stage.

(e) Issue (A) framed by the petitioner need not be considered as there is a sanction granted by the authority.

(f) Issue Nos. (B) and (C) pertain to the validity of the sanction and cannot be gone into at this stage.

(g) Whether an offence under Section 364A of the IPC is prima facie made out, is not to be considered by this Court since it would be a subject matter of trial.

(h) Section 227 of the CrPC provides for discharge and the scope of exercising jurisdiction under this provision is narrow, unless there is no material available for initiating prosecution. The accused cannot be discharged if it is noticed that there is some material available, which would be sufficient to initiate prosecution for the offences alleged to have been committed.

(i) The issue of delay under Section 161 of the Bombay Police Act, has been settled in the **State of Maharashtra v. Atmaram** (supra).

(j) The judgment cited by the petitioner in the matter of K.K.Patel (supra) refers to the judgment of the State of Maharashtra (supra), to the extent of Section 364A and it''s applicability and it would a matter of trial as to whether eventually, the prosecution succeeds in proving the case under Section 364A.

(k) Prima facie, the allegations by the complainant that he was kidnapped and threatened with physical harm and death unless the ransom is paid, is found in the supplementary statement of the father-in-law of the complainant.

(l) The statement of the complainant''s father in law Digambar Mali and his son Manoj Mahajan clearly support Section 364A.

(m) A demand of ransom and the threat of losing his life if not paid, are also found in the supplementary statements.

(n) The petitioner has committed the alleged act despite the fact that no notice under Section 160 of the CrPC for interrogation was given.

(o) No offence was registered against the complainant Dr. Uttamrao Mahajan in any Police Station.

(p) In the absence of any FIR under Section 154, the petitioner deputed the Sub-Inspector Shri Nimbalkar, who was carrying a Revolver and by forcing the complainant to sit in between the Sub-Inspector and a pillion rider (triple seat), who had accompanied Shri Nimbalkar, would indicate that the complainant was forcibly

physically taken to the office of the petitioner and was prevented from attending the meeting of the President of the Indian National Congress, notwithstanding that he was a Member of the Zilla Parishad, Jalgaon and belonged to the Indian National Congress Party.

(q) In the absence of any FIR being registered and in the absence of any cognisable offence so to say, the acts committed by the petitioner are beyond the purview of his official duties and therefore, even if the sanction is set aside, the lack of sanction or lack of legal and valid sanction under Section 197 of the CrPC would be of no consequence and it would not affect the trial in the matter.

(r) Validity of sanction can be gone into only after the trial has commenced.

(s) The trial commences only after the charge is framed under Section 228(2) of the CrPC.

(t) Sanction for prosecution is granted against the offence committed and not to a particular Section that would be invoked, considering the fact that the sanction is sought on the basis of the FIR, in which Section 364A has been mentioned.

(u) The issue as regards the first sanction, it''s cancellation and the grant of second sanction are covered in the judgment of the Honourable Supreme Court in the matter of **State of Bihar v. Rajmangal [2014 AIR SC 1674]**.

(v) Whether the additional material available has been duly considered or not and whether there is application of mind or not, is to be considered during the trial.

8. Shri Girase, learned Public Prosecutor has placed reliance on the following judgments:-

(i) **State of Maharashtra v. Som Nath Thapa - (1996) 4 SCC 659**

(ii) **Soma Chakravarty v. State through CBI - (2007) 5 SCC 403**,

(iii) **Amit Kapoor v. Ramesh Chandeer and another - (2012) 9 SCC 460**,

(iv) **Chitresh Kumar Chopra v. State - (2009) 16 SCC 605**,

(v) **State of Bihar v. Ramesh Singh - (1977) 4 SCC 39**,

(vi) **Vinay Tyagi v. Irshad Ali @ Deepak and others - (2013) 5 SCC 762**,

(vii) **Inspector of Police v. Battenapatla Venkata Ratnam - 2015 AIR (SC) 2403** and

(viii) **State of Bihar and others v. Rajmangal Ram - 2014 AIR (SC) 1674**.

9. Shri Deshmukh, in rebuttal, submits as under:-

(a) Sanction under Section 197 is necessary, considering the law laid down by the Honourable Supreme Court in the matter of P.K.Choudhary (supra), since Section 166 of the IPC has been invoked.

(b) The statement made by the counsel for the State before the Honourable Apex Court recorded in the order dated 24.1.2011 that Section 364A is not being invoked, needs to be accepted.

(c) The first sanction order does not mention Section 364A.

(d) The complainant was summoned for enquiry by the petitioner, keeping in view, the decision of the learned Full Bench in the matter of Sandip Shukla (supra) and hence, no fault can be found with the petitioner as he interrogated the complainant in the discharge of his official functions and duties.

(e) The remark with the date 30/6 on the complaint filed by Purushottam Patel against the complainant Dr. Uttamrao Mahajan indicates that the petitioner directed the Police Inspector to register the offence against Dr. Mahajan, after he had interrogated the complainant Dr. Mahajan and prima facie found merit in the complaint lodged against him.

(f) No FIR has been registered against Dr. Mahajan since the District Superintendent of Police had interjected in the matter.

(g) Whether the enquiry conducted by the petitioner was in the course of his duties or not, can be scrutinised in the light of the judgment delivered in the case of Abdul Wahab Ansari (supra).

10. I have considered the submissions of the learned Advocates for the respective sides as have been recorded herein above and have gone through the judgments cited.

11. It would be advantageous to reproduce, in a concise form, the contents of the complaint (undated) lodged by Purushottam Patel and the complaint filed by the complainant in this case - Dr. Uttam Mahajan, his son Dr. Manoj Mahajan and his father-in-law Shri Digambar Mali, as well as the statements of Kedarsing Dharma Patil, Ishwar Jadhav, Ramesh Shimpi and Sajan Kautik Patil as under:-

(A). Purushottambhai Vallabhbhai Patel, r/o Surat had lodged a complaint (undated) before the petitioner, who was Additional Police Superintendent, Chalisgaon at the relevant time. It is alleged that complainant - Shri Patel that had undertaken construction work of Hostel, Staff Quarters etc. of Gudhe Ayurvedic Hospital, managed by Kisan Dnyanoday Mandal. For the said purpose he entered into a contract on 17.2.2004 and it was agreed between the parties that the construction will be carried out at the rate of Rs.345/- per sq. ft. The said agreement was signed by him, Dr. Uttam Dhana Mahajan and other witnesses. However, said Mahajan, with malafide intentions, did not hand over the copy of the said agreement to complainant Patel.

It is further alleged that as agreed, Patel has carried out the construction work of hostel, staff quarters and dining hall, totally admeasuring 30104.53 sq. ft. Besides

this, he has also carried out the construction of the tower and the water tank admeasuring 1043.37 sq. ft.

According Shri Patel as against the bill of Rs.1,05,37,880/-, he was paid only Rs.84,56,703/-. Irrespective of the joint measurement carried out in the presence of the Civil Engineer of the choice of Dr. Mahajan, the latter avoided to pay the balance amount on one or the other pretext and has mis-appropriated a sum of Rs.21,00,000/-. According to complainant Patel, said Shri Mahajan has obtained his signatures so also the signatures of his partner on the registers and various bills and mis-appropriated the amount of the institution. He has lodged a complaint accordingly.

(B). On 2.7.2009, Manoj s/o Uttamrao Mahajan i.e. son of the complainant Respondent No.2 in these proceedings, lodged a complaint with Police Superintendent, Jalgaon narrating that his father Dr. Uttamrao Dhanaji Mahajan is the President of Kisan Dnyanoday Mandal and Principal of Gudhe Ayurvedic College, conducted by the said educational institution. That, his father is active worker of Congress (I) political party and member of the Zilla Parishad, Jalgaon.

According to him on 30.6.2009, when his father was to leave Chalisgaon for a prearranged political function at Malegaon along with his co-workers, Police Sub Inspector Nimbalkar and two other police constables in uniform, intercepted and told his father that Shri Manoj Lohar (Additional Superintendent of Police) has called him for a two minutes'' work. Those police personnel made his father to sit on the motor cycle of PSI Nimbalkar and carried him to the office of Shri Manoj Lohar situated at Malegaon Road.

It is further alleged that in the office, Shri Manoj Lohar told my father that he has been called for an enquiry of the complaint of Purushottambhai Patel, lodged against him and asked him to read the complaint. My father told Shri Lohar that the said complaint is false and he has shown his readiness to show the relevant documents after he returns from the Malegaon function. According to the complainant, at that time, Kedarsinh Dharma Patil and other party workers were present with his father. Shri Lohar asked Dr. Mahajan to tell the party workers to proceed for the function at Malegaon and that his father will follow them after the enquiry. Accordingly, the party workers left for attending the function. It is further alleged that he was at Nagpur for Bank work on 30.6.2009. At about 2 to 2.30 p.m. he received a call from his father. His father told him that Shri Lohar has called his father for enquiry and asked him where are the three years old papers of Shri Patel. According to complainant, he asked an employee of the institution - Shri Nitin Jadhav to carry those audited papers to Shri Lohar Saheb''s office. Accordingly, they were carried and shown to Shri Lohar Saheb. Shri Lohar saw the papers and said that all these papers are bogus. Shri Lohar abused his father and threatened to lodge various offences against him and put him behind the bars. His father was even physically threatened.

At that time, it is alleged, Shri Dhiraj Yevale entered the office of Shri Lohar and showed his willingness to help his father to sort out the matter. According to him, after negotiations the demand was settled at Rs.25,00,000/- plus Rs.50,000/- for PSI Nimbalkar and his colleagues, as against the initial demand of Rs.60,00,000/-. Thereafter, Shri Lohar compelled his father to sign and issue three cheques for Rs.21,00,000/- to be paid to Purushottam Patel.

It is further alleged that his father was taken in the vehicle of Dhiraj Yevale at about 2 to 2-15 am (early morning) along with PSI Nimbalkar at some unknown place and kept in custody for seeking ransom of Rs.21,00,000/-. The complainant was also directed to alight at Chalisgaon. Since then, according to him, he had no contact with his father.

After reaching Chalisgaon, it is further alleged, that he searched for his father at the bungalow of the brother of Dhiraj Yevale, Police Office and Chalisgaon Police Station, but in vain. Thereafter, he went to the house of Dhiraj Yevale at Pawarwadi. He came to know that his father had been kept on the terrace of the bungalow of the brother of Dhiraj Yevale, located in front of the office of the Additional Superintendent, Chalisgaon and the gate of the ground floor was locked. According to him, his father was kidnapped and detained for ransom. Cell phone of his father was switched off. Further according to him, when his father made repeated requests to allow him to talk to him so that he can arrange for money, he was allowed to talk to him (son of Dr. Mahajan) on the Cell phone.

He also made enquiry with his grand-father at Shirpur, who had reached Chalisgaon by that time after coming to know the incident. He thereafter lodged a complaint, on fax, to the Superintendent of Police, Jalgaon and after his intervention, his father was released at around 4.00 on 1.7.2009.

(C) Victim (Respondent No.2 - Complainant) Dr. Uttamrao Dhanaji Mahajan also lodged a complaint on 16.7.2009. He narrated that he is Principal of Ayurvedic College at Chalisgaon and Party worker of Congress (I) and Member of the Jalgaon Zilla Parishad. According to him, there was a programme of Congress (I) party arranged at Malegaon, District Nasik on 30.6.2009 and President of the party Smt. Sonia Gandhi was to remain present for the said function. He was shouldered the responsibility to carry the party workers of Chalisgaon to the said function

It is further alleged that on 30.6.2009 at 11.00 am when he was to leave Chalisgaon for the said function along with party workers Shri Kedarsingh Dharma Patil, Ishwar Jadhav Ex. MLA, Ramesh Shimpi and Shajan Kartik Patil, one police officer in uniform accompanied by two persons in civil dress, approached him. From the name plate he gathered the name of PSI Nimbalkar. PSI Nimbalkar told him that he has been called by Additional Superintendent of Police Shri Lohar Saheb. He told PSI Nimbalkar that he has to attend one important programme at Malegaon and that on his return he will meet Shri Lohar Saheb. PSI Nimbalkar did not listen to him and

forced him to sit on his motor cycle. Other party workers followed him to the office of Shri Lohar.

At the office, all the party workers requested Shri Lohar that they have to attend the important function at Malegaon and therefore, Dr. Mahajan be allowed to accompany them for the function. They also assured that they will present Shri Mahajan before him after the function is over. Shri Lohar, however, did not listen. Therefore, the complainant told the party workers to go to Malegaon and attend the function.

According to the complainant, Shri Lohar called him in the cabin and pressurized him by using foul and filthy language. He told him that a person from Surat had lodged a complaint against him. He gave the complaint for reading to the complainant. After going through the said complaint, he told Shri Lohar that the complaint is false and bogus and that the amount of work, on the basis of labour payment, has already been paid. However, according to him, Shri Lohar was not in a mood to listen to anything. Shri Lohar abused the complainant and threatened him with dire consequences.

According to the complainant, at that time one Dhiraj Yevale entered the office of Shri Lohar. He went inside the chamber of Shri Lohar. The complainant was made to sit in the adjacent room. Again complainant was called in the chamber of Shri Lohar and was pressurized. Shri Lohar told PSI Nimbalkar to lodge the offences under Sections 420, 407 and other sections of the Indian Penal Code, against the complainant.

Further, according to the complainant, at that time, Dhiraj Yevale told the complainant that he will act as a Mediator and that the complainant will have to give something to Shri Lohar, or else he has no escape.

Being frightened and since the complainant had already suffered two heart attacks as well had undergone Angioplasty at Ruby Hall Clinic, Pune, he asked Yevale to settle the issue. Shri Yevale, in front of the complainant, asked Shri Lohar his expectations. Shri Lohar demanded Rs.60,00,000/- (Rs. Sixty Lakhs) from the complainant. After negotiations, the amount was settled at Rs.25,00,000/- for Shri Lohar and Rs.50,000/- for PSI Nimbalkar. Shri Lohar told the complainant to place cash on table and also demanded cash of Rs.21,00,000/- for the complainant - Patel. Since the complainant had no money at that time, Shri Lohar asked him to sign a cheque for Patel and call his relatives and arrange for the cash of Rs.25,00,000/- by 12.00 midnight. Left with no alternative, the complainant called a clerk of the college-Nitin Jadhav, to bring the cheque book. Shri Lohar forced him to write three cheques of Rs.8,00,000/-, 7,00,000/- and 6,00,000/- respectively, totalling Rs.21,00,000/- in the name of Shivam Constructions.

According to the complainant, his cell phone was switched off since morning, when he was brought to the office of Shri Lohar and he was illegally detained for seeking

ransom of Rs.25,00,000/-. Ultimately, it is alleged that the complainant was allowed to talk to his father-in-law Shri Digambar Pandu Mali, r/o Shirpur, District Dhule for arranging Rs.25,00,000/-. It is further alleged that when his father-in-law reached the Additional S.P. office at about 11.30 to 12.00 in the midnight, the complainant was being brought downstairs from the office of Shri Lohar by Shri Lohar, PSI Nimbalkar and Dhiraj Yevale. At that time, it is alleged that he was placed in the custody of PSI Nimbalkar (who was having a revolver with him). It is alleged that he was taken in front of the office of the Additional S.P. and detained there. During this period, it is alleged that his cell phone was in the custody of PSI Nimbalkar.

It is further alleged that the complainant, on 1.7.2009 at 2.00 a.m. (midnight), was shifted by Dhiraj Yevale and PSI Nimbalkar to another house in a black car, where, the complainant was kept on a terrace. The complainant revealed that it was the house of Dhiraj Yevale. It is further alleged that to arrange for money, the complainant was allowed to use his cell phone to talk to his relatives. It is further alleged that around 10.00 to 10.30 am senior party workers and the son of the complainant reached the spot, where the complainant was detained. However, the complainant was not allowed to talk to them.

It is further alleged by the complainant that at 11.00 am, the complainant was driven on a motor cycle to the office of Shri Lohar. At that time the complainant was made to sit on the motor cycle between the rider and PSI Nimbalkar. Shri Lohar abused the complainant in his office on the count that he had disclosed his location on his cell phone. It is further alleged that since no funds could be arranged till 1.00 pm, Shri Lohar threatened him.

It is further alleged that Shri Lohar abused and threatened the complainant since his son had contacted the Superintendent of Police. Shri Lohar further threatened to keep the son of the complainant in police custody and lodge offences against him. It is further alleged that after intervention of the Superintendent of Police, Jalgaon the complainant was allowed to go to home.

(D) Shri Digambar Pandu Mali, r/o Shirpur, District Dhule, who is father-in-law of the complainant Dr. Uttam Mahajan, besides his statement dated 18.7.2009, vide his supplementary statement dated 31.10.2011 has stated that on 30.6.2009, he received a phone call from his son-in-law Dr. Uttam Mahajan that he urgently needs Rs.25,00,000/-. On my query, Uttam Mahajan told him that a complaint has been lodged against him by Patel before Shri Lohar Saheb and Shri Lohar has detained him for ransom of Rs.25,00,000/-. Uttam Mahajan requested him to arrange for the said amount.

It is further alleged that immediately he rushed to Chalisgaon and met Dhiraj Yevale. Dhiraj Yevale told him that he has settled the issue and Rs.25,00,000/- are to be paid to Shri Lohar. Dhiraj Yevale had further stated that Dr. Mahajan is not in his own house, but is at his bungalow and not in jail. He sought time for arranging the

amount till the banks are re-opened. Dhiraj Yevale, on his request called someone and told him that Saheb is not willing to release Dr. Mahajan till the amount is paid and further told that if he attempts to run away, there will be an encounter of Dr. Mahajan.

It is further narrated that Dr. Mahajan told him that he was detained in a bungalow under the vigil of PSI Nimbalkar and when his grand-son Manoj informed the Superintendent of Police, Jalgaon, on the intervention of the Superintendent of Police, his son-in-law was released.

(E) Witnesses Kedarsing Dharma Patil, Ishwar Jadhav, Ramesh Shimpi and Sajan Kautik have, in their statements before the Police, supported the complainant, on material particulars.

12. Considering the conspectus of this matter, I find it convenient and appropriate to frame the following points which I would deal with in this judgment:-

(A) Whether the competent authority can review the sanction already granted ?

(B) Effect of Section 161 of the Bombay Police Act and the in-built limitation in relation to the nature of the acts committed by a public servant, in this case, the petitioner.

(C) Which ingredients would make a valid sanction for prosecution under Section 197 of the CrPC ?

(D) Whether the petitioner in the instant case deserves to be discharged under Section 227 of the CrPC ?

(A) Whether the competent authority can review the sanction already granted?

13. As noted in the submissions of the learned Advocates and the specific pleadings in the memo of the petition, it is conceded that the sanctioning authority can review a sanction. Similarly, the litigating sides are united in submitting that validity of a sanction is a mixed question of facts and law and can be considered during trial. However, the issue (C) framed by me above, regarding validity of a sanction, is being dealt with since the petitioner has insisted that the issue as to whether there was an additional material available, so as to render validity to the sanction, be decided in this Court itself.

(B) Effect of Section 161 of the Bombay Police Act and the in-built limitation in relation to the nature of the acts committed by a public servant, in this case, the petitioner.

14. The gamut of this matter finds its origin in the undated complaint of Shri Purushottam Patel, the gist of which is reproduced above. The entire grievance of Purushottam Patel is that he had undertaken some construction work allotted to him by Dr. Uttamrao Mahajan and despite having completed the said construction,

Dr. Mahajan has not been paying his dues. He had tried to persuade Dr. Mahajan to make the payment, but in vain and that Dr. Mahajan is making him run from pillar to post for such payment.

15. It is evident from the said complaint that firstly, Purushottam Patel has not averred or attributed any such acts to Dr. Mahajan, which would indicate that he was being threatened or terrorized for having demanded his dues. Secondly, no complaint is registered by Purushottam Patel in any Police Station, which is an admitted position. The fact remains in the light of the allegations levelled by the complainant and some of his witnesses that the petitioner had Dr. Mahajan physically picked up and made to sit in between the motor-cycle rider Sub-Inspector Nimbalkar and a pillion rider and was taken forcibly to the office of the petitioner. The background, therefore, is that in the absence of any registration of an offence, Dr. Mahajan was subjected to interrogation.

16. The complaint filed by Purushottam Patel will have to be read along with the complaint of Dr. Mahajan so as to scrutinize the contention of the petitioner that he was discharging his duties in exercise of the powers of his office. From the complaint of Purushottam Patel, I do not find any such act committed by Dr. Mahajan, which could be termed as being a cognisable offence. Even if the second part of Section 506 of the IPC is scrutinized, no such offence appears to have been made out against Dr. Mahajan.

17. Shri Girase, the learned Public Prosecutor and Shri Bachate, learned Advocate for respondent No.2/complainant have relied upon the judgment of the Honourable Supreme Court in the mater of **State of Maharashtra v. Atma Ram** (supra) to contend that notwithstanding the grant of sanction, if the effect of Section 161 is to be seen, the nature of the acts committed by the petitioner will have to be scrutinized.

18. Shri Girase and Shri Bachate have relied upon paragraph No.3 of the Atma Ram''s judgment (supra) (3 Judges'' Bench of the Honourable Supreme Court), which reads thus:-

"3. In **State of Maharashtra v. Narharrao, Cri Appeal No. 214 of 1966: (AIR 1966 SC 1783**, judgment in which has been pronounced just now, we have considered the true legal effect of Section 161 (1) of the Bombay Police Act. We have expressed the view in that case that there must be a reasonable connection or nexus between the alleged act and the duty or authority imposed upon the officer under the Bombay Police Act or any other enactment conferring powers on the police under the colour of which the act may be said to have been done. Unless there is a reasonable connection between the act complained of and the powers and duties of the office, it is difficult to say that the act was done under the colour of the office. In the present case, it was said that the respondents were making an enquiry under Section 64(b) of the Bombay Police Act which states:

"64. It shall be the duty of every Police Officer -

(a)

.....

(b) to the best of his ability to obtain intelligence concerning the commission of cognisable offences or designs to commit such offences, and to lay such information and to take such other steps, consistent with law and with the orders of his superiors as shall be best calculated to bring offenders to justice or to prevent the commission of cognisable and within his view of non-cognisable offences;"

It is apparent in this case that the First Information report was recorded on September 5, 1962 on the enquiry report of respondent No. 1 and investigation commenced thereafter. There is nothing in the language of Section 64 (b) of the Bombay Police Act to suggest that the police officer is authorised to beat the persons examined or to confine them for the purpose of inducing them to make a particular statement. Section 161, Criminal Procedure Code empowers any police officer investigating a crime or any other police officer acting on his requisition to examine orally any person supposed to be acquainted with the facts and circumstances of the case. That section further provides that such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. It is necessary, in this connection, to notice the provisions of Section 163, Criminal Procedure Code which is to the following effect:

"163. (1) No Police-officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872. Section 24.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will."

The provisions of Sections 161 and 163 of the Criminal Procedure Code emphasize the fact that a police officer is prohibited from beating or confining persons with a view to induce them to make statements. In view of the statutory prohibition it cannot, possibly, be said that the acts, complied of, in this case, are acts done by the respondents under the colour of their duty or authority. In our opinion. There is no connection, in this case between the acts complained of and the office of the respondents and the duties and obligations imposed on them by law. On the other hand, the alleged acts fall completely outside the scope of the duties of the respondents and they are not entitled, therefore, to the mantle of protection conferred by Section 161 (1) of the Bombay Police Act. This view is borne out by the decision of this Court in **State of Andhra Pradesh v. N. Venugopal, AIR 1964 SC 33**, in which the effect of Section 53 of the Madras District Police Act was construed by

this Court and it was held that the protection of that section cannot be extended to police officers accused of beating a person suspected of a crime or confining him in the course of investigation. A similar view has been expressed by Full Bench of the Bombay High Court in **Narayan Hari v. Yeshwant Raoji, AIR 1928 Bom 352 (FB)**, in which a Sub-Inspector of Police while investigating a cognisable offence against two berads sent for the plaintiff and questioned him as to his connexion with the berads. The plaintiff disclaimed all knowledge about the berads. Then it was alleged, defendant No. 1, the Sub-Inspector, grew angry and abused the plaintiff and pulled him up by his mustache It was further alleged that defendant No. 2 at the instance of defendant No. 1 beat the plaintiff. The plaintiff filed a suit to recover damages from the defendants for their alleged wrongful treatment of him. It was held by the Full Bench that the alleged assault or battery cannot be said to have been committed under colour or in excess of such duty or authority under Section 80 (1) of the Bombay Police Act and that the defendants were not entitled to notice either under Section 80 (4) Bombay District Police Act or Section 80, Civil Procedure Code."

19. The view taken by the Honourable Apex Court is that the effect of Sections 161 and 163 of the Bombay Police Act and the protection granted to the Police Officer would not amount to a protection if the acts complained of are under the colour of his duty or authority, if there is no connection between the acts complained of and the offence of the Police Officer and the duties and obligations imposed on him by law. It is further held that when the alleged acts fall completely outside the scope of the duties of the Police Officers, they would not be entitled to the mantle of protection conferred by Section 161 of the Bombay Police Act. An earlier judgment delivered by the Honourable Apex Court in the matter of **State of A.P. v. N. Venugopal [AIR 1964 SC 33]**, was referred to since the said judgment was in relation to a similar provision under Section 53 of the Madras District Police Act.

20. The petitioner has placed reliance upon the judgment of the Honourable Supreme Court in the matter of K.K.Patel (supra). In my view, paragraph Nos.14 and 15 of the said judgment would render assistance in deciding this case and the same read as under:-

"14. The sub-section imposed a ban on the court from entertaining a prosecution for an offence falling within the purview of the sub-section and was committed by a police officer, if the prosecution was instituted more than one year after the date of the act complained of. The only exception to the said ban is, if the complainant gets sanction from the State Government to prosecute the police officer the aforesaid period of one year would get enlarged to two years. Offences falling within the purview of the sub-section relate to those acts done "under the colour or in excess of any duty or authority as aforesaid". The sub-section then widens the net a little further by bringing within its sweep those offences committed through any acts done which are "of the character aforesaid". The expression "aforesaid" in the subsection is evidently with reference to what is mentioned in Sections 159 and 160

of the same enactment. Those provisions afford an absolute immunity to a public servant from any penalty or liability to pay damages in respect of any "act done in good faith" in pursuance of or intended pursuance of "any duty imposed or any authority conferred on him by any provision of this Act or any other law for the time being in force or any rule, order or direction made or given thereunder". Such absolute immunity is not afforded in respect of any offence or wrong alleged to have been done by such public servant, if it was done "under colour or in excess of any such duty or authority as aforesaid". Nonetheless the said statute has fixed a time limit for initiation of prosecution proceedings in such cases against the public servant. If prosecution proceedings were not initiated within such time limit, they cannot be commenced thereafter.

15. A three Judge Bench of this Court in **Virupaxappa Veerappa Kadampur v. State of Mysore (AIR 1963 SC 849)** has considered the amplitude of the expression "under the colour of any duty or authority" as envisaged in the sub-section. After making reference to some of the earlier decisions rendered by the Bombay High Court and after noticing the meaning of the expression "colour of office" given in Law lexicons, learned Judges observed thus:

"Whether or not when the act bears the true colour of the office or duty or right, the act may be said to be done under colour of that right, office or duty, it is clear that when the colour is assumed as a cover or a cloak for something which cannot properly be done in performance of the duty or in exercise of the right or office, the act is said to be done under colour of the office or duty or right. It is reasonable to think that the legislature used the words ''under colour'' in Section 161(1) to include this sense. ..... It appears to us that the words ''under colour of duty'' have been used in Section 161(1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police officer) prepares a false Panchanama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in Stroud''s Dictionary ''as a veil to his falsehood.'' The acts thus done in dereliction of his duty must be held to have been done under colour of the duty."

21. It is, therefore, apparent that when a Police Officer claims the protection of limitation of two years under Section 161 of the Bombay Police Act, it would have to be seen as to whether the offences complained off would be those which have been committed under the colour or in excess of any duty or authority as above said. The Honourable Apex Court has ruled that the offences committed will have to be considered within the expression of the ''duty or authority'' as envisaged under Section 161(1) of the Act. It is thus held that any act committed by a Police Officer would not render him absolute immunity, if the said acts are done under the colour or in excess of any such duty or authority. An earlier judgment (3 Judges'' Bench) of the Honourable Apex Court in the State of Mysore case (supra) has also been relied upon in paragraph No.15 by the Honourable Apex Court.

22. Notwithstanding the conclusion in the foregoing paragraphs that the contents of the complaint of Purushottam Patel does not make out a cognisable offence, even if it is presumed that the same would fall in the first part of Section 506 of the IPC or the second part, the said offence is non-cognisable, bailable and also compoundable besides being triable.

23. The petitioner has relied upon the Full Bench judgment of this Court in the matter of Sandeep Shukla (supra), to support his contention that the learned Full Bench has concluded that in a matter of such nature (complaint of Purushottam Patel), the Police Officer can conduct an enquiry which has to be completed within 48 hours and then take a decision as to whether any offence deserves to be registered or not. The observations of the learned Full Bench in paragraph No.101(b) is an answer to the issue before me. Same reads as under:-

"101(b) As the law does not specifically prohibit conducting of a limited preliminary inquiry, preregistration of FIR in exceptional and rare cases by the officer in charge of a Police Station, he may penultimately thus enter upon a preliminary inquiry in relation to information supplied of commission of a cognisable offence but only and only upon making due entry in the Daily Diary/Station Diary/Roznamachar instantaneously with reasons as well as the need for adopting such a course of action. Such inquiry should be completed expeditiously and in any case not later than two days. Thereafter, the FIR should be recorded in the prescribed register and/or the officer should take any other recourse permissible to him strictly in accordance with the provisions of the Code of Criminal Procedure under which he is empowered to investigate. Such cases can be illustrated by giving an example i.e. when the information received in regard to commission of a cognisable offence would patently cause absurd results or report of happening of events, authenticity of which ex facie is extremely doubtful."

24. It is, therefore, apparent that the learned Full Bench, while dealing with Section 154 of the CrPC, concluded that before registering an FIR, which is termed as a preregistration of FIR stage, in an exceptional and rare case, the officer in charge of the Police Station would conduct a preliminary enquiry. It is a matter of curiosity as to how did Purushottam Patel straight away land into the office of the petitioner, who was Additional Superintendent of Police and when no such complaint was lodged with the Chalisgaon Police Station, where normally, it ought to have been lodged. The mystery deepens by the fact that the said complaint is undated and it is the case of the petitioner that it was lodged before him on 29.6.2009. It appears that the petitioner acted with electric speed and deputed PSI Nimbalkar to forcibly pick up Dr. Mahajan and bring him to his office. The events that have occurred thereafter have already been summarized in the earlier part of this judgment.

25. The Honourable Apex Court, while dealing with the protection under Section 197 of the CrPC, has held in the S.K.Zutshi case (supra), in paragraph No.5 as under:-

"5. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

26. In Chaudhary Parveen Sultana (supra), the Honourable Apex Court has held in paragraph Nos.14 to 17 as under:-

"14. The direction which had been given by this Court, as far back as in 1971 in Bhagwan Prasad Srivastava''s case (supra) holds good even today. All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 Cr.P.C. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be

performed by him. As mentioned in Bhagwan Prasad Srivastava''s case (supra), the underlying object of Section 197 Cr.P.C is to enable the authorities to scrutinize the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated herein above, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 Cr.P.C. and have to be considered de hors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned.

15. In the instant case, certain deeds and acts have been attributed to the respondent No.2 and another accused, which cannot be said to have been part of the official duties to be performed by respondent No.2. Hence, in our view, the respondent No.2 was not entitled to the protection of Section 197 Cr.P.C. in respect of such acts.

16. While dealing with the aforesaid question, the High Court appears to have been swayed by the submissions made on behalf of the respondent No.2 that since in the complaint the acts of extortion and criminal intimidation were alleged to have been committed by the respondent No.2 and co-accused while conducting investigation in connection with Behrampore Police Station Case No. 348 dated 9.11.2005, such offences were purported to have been committed by the respondent No.2 while discharging official duties.

17. We have already indicated that we are unable to accept such a view. In our view, the offences complained of cannot be said to part of the duties of the Investigating Officer while investigating an offence alleged to have been committed. It was no part of his duties to threaten the complainant or her husband to withdraw the complaint. In order to apply the bar of Section 197 Cr.P.C. each case has to be considered in its own fact situation in order to arrive at a finding as to whether the protection of Section 197 Cr.P.C. could be given to the public servant. The fact situation in the complaint in this case is such that it does not bring the case within the ambit of Section 197 and the High Court erred in quashing the same as far as the respondent No.2 is concerned. The complaint prima facie makes out offences alleged to have been committed by the respondent No.2 which were not part of his official duties."

(Emphasis supplied).

27. In Parkash Singh Badal''s case (supra), the Honourable Apex Court has held in paragraph No.35 as under:-

"35. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences

alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. This aspect makes it clear that the concept of Section 197 does not immediately get attracted on institution of the complaint case."

28. It is, therefore, visible that, the complaint of Purshottam Patel should have been filed in a Police Station. Had this been done, the S.H.O. of the said Police Station could have caused a preliminary enquiry before registering an F.I.R. It is quite mysterious that Purshottam Patel reached the office of the petitioner, Additional Superintendent of Police, who had no reason to entertain an undated complaint and cause purported investigation, without the S.H.O. of the concerned Police Station have any clue about such investigation. What is said to have actually happened in the office of the petitioner, his tout Dhiraj Yeole mediating for settling the ransom amount and the kidnapping and illegal detention of the complaint, is visible in the statements recorded during investigation. By no stretch of imagination can the conduct of the petitioner be co-related to the purported investigation or discharge of his duties. The allegations point towards an odious and heinous act. Kidnapping and threatening to kill a person for extracting ransom and by using a tout for mediating, as are the allegations, by a police officer, would spell doom for the ''protectors of law and the Society'', if they are proved in the trial.

29. As such, prima facie, I am of the view that the petitioner has pretended to act under the colour of his authority and in fact, has tried to commit an unlawful act, which cannot be termed to be connected with his duty. In this backdrop, even if the State has granted sanction, prima facie, the same would amount to a grant of sanction by way of an abundant precaution. As such, the protection under Section 161 of the Bombay Police Act would not be available to the petitioner. It is made clear that I have dealt with this issue since the petitioner has contended that as the two years'' period pursuant to the registering of the offence is over and sanction is not granted within the said period, there can be no prosecution of the public servant. For the reasons set out herein above, in my view, the petitioner would not be entitled for the protection under Section 161 of the said Act and the sanction granted after two years would not be fatal to the pending trial.

(C) Which ingredients would make a valid sanction for prosecution under Section 197 of the CrPC ?

30. With regard to the third issue that I have formulated, it needs to be considered as to what would be the ingredients which will have to be taken into account so as to deal with the aspect of validity of a sanction? The petitioner is seriously aggrieved by the invoking of Section 364A of the IPC. It reads as under:-

" **Section 364A - Kidnapping for ransom etc.** Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or [any foreign State or international inter-governmental organization or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

31. Shri Deshmukh, learned Advocate submits that the learned Division Bench of this Court, while permitting the petitioner to withdraw Criminal Writ Petition No.2252 of 2012, had granted liberty, by order dated 26.11.2014, to raise all the contentions before the learned Sessions Court, while seeking discharge from the proceedings. The learned Sessions Judge has over looked these directions and has declined to consider all the contentions of the petitioner. I do not find any merit in the said submission for the reason that the learned Division Bench has recorded the request of the petitioner, while permitting him to withdraw the petition.

32. Pursuant to the said request, the learned Division Bench granted liberty to the petitioner by observing that, "All permissible contentions would be allowed to be raised before the trial Court in support of the plea of the petitioner for seeking his discharge as well as for challenging the validity of the sanction orders."

In so far as permissible contentions are concerned, the view taken by the Honourable Supreme Court in the case of Parkash Singh Badal (supra) squarely

restricts the petitioner from challenging the validity of the sanction order at this stage, as the same has to be considered during the trial. I would delve into this issue later.

33. Though it has been vehemently submitted by Shri Deshmukh that the legality and validity of the sanction can be split/segregated into two portions, by which, this Court can decide whether there was material available for convincing the sanctioning authority to grant the second sanction, I am unable to accept the said submission, since the legality and the validity of the sanction necessarily means and includes any factor touching the sustainability of the sanction.

34. As recorded herein above, it is undisputed that the petitioner herein had approached this Court for seeking bail. By the judgment of this Court dated 5.9.2009, the petitioner was released on bail. However, in it''s observations in paragraph Nos.16, 18 and 20 this Court practically indicated to the prosecution that the ingredients required for establishing an offence under Section 364A are missing from this case. This Court, in fact, noted that merely because an armed Police Officer was deputed to keep watch on the victim, would not prima facie indicate a threat being conveyed to the victim that he was likely to be put to death. In paragraph No.20, this Court observed that whether a conspiracy was hatched by the petitioner herein is not germane to the constitution of the offence under Section 364A of the IPC. In paragraph No.22(iv), this Court virtually directed the Investigating Officer to first collect material and then scrutinize whether the commission of offence would attract Section 364A with the help of narco analysis test. In my view, and as has been strenuously canvassed by Shri Girase, the learned PP, this appears to have deterred the Investigating Officer and upon developing cold feet, he moved an application for deletion of Section 364A of the IPC. It cannot be ignored that Section 364A was already invoked in the FIR.

35. Pursuant to the above order of this Court and the application filed for deletion of Section 364A, the complainant Dr. Uttamrao Mahajan and his son approached the Honourable Supreme Court by filing a Criminal Appeal. By order dated 24.1.2011, the Apex Court set aside the order of this Court dated 5.9.2009, by concluding that the order of the High Court was completely unjustified and is accordingly set aside.

36. Much ado has been created on the aspect of a statement having been made before the Honourable Apex Court that the Police on investigation have found that a case under Section 364A of the IPC has not been made out. I do not find that the Honourable Apex Court has set aside the order of this Court on the basis of the said statement. The order of this Court granting anticipatory bail to the petitioner has been set aside on merits. The order of the Honourable Apex Court recording the submission that no case has been made out under Section 364A cannot be accepted as being a declaration made in law, before the trial has commenced, which would preclude the prosecution from proceeding with the trial for proving an offence under Section 364A.

37. The term ''valid'' has been defined in the Black''s Law Dictionary as meaning, "legally sufficient, binding, meritorious and a sustainable conclusion." The Oxford Dictionary defines the term ''validity'' as being one "which is legally sustainable, the State of being legally or officially acceptable and the state of being logically true and correct."

38. It is on the insistence of the petitioner that I am dealing with the issue as to whether there was sufficient/additional material available before the sanctioning authority, so as to sustain the sanction. In my view, the aspect of whether there was an additional material before the sanctioning authority cannot be considered in isolation because the said material would be of no significance if it has not been duly considered and there is no application of mind. In my view, the aspect of validity cannot be segregated into compartmentalized parts and in fact would have to be considered as a single issue as it will go to the root of the validity, legality and the correctness of the said sanction.

39. As recorded herein above, Section 364A has attracted curiosity in this matter because of the ups and downs suffered by the prosecution in this Court, earlier by the order of granting anticipatory bail dated 5.9.2009 and then the application by the Investigating Officer, therefore, to delete the said section. By the order dated 24.1.2011, delivered by the Honourable Apex Court, the order of this Court was set aside. The material before the sanctioning authority therefore, needs to be construed and considered in this backdrop.

40. The first statement recorded by the father-in-law of the complainant Digambar Mali needs to be compared with his second statement. The Home Department of the State, while granting the first sanction on 4.10.2011 against the petitioner and PSI Vishwas Bhausaheb Nimbalkar, being public servants, has noted in details the criminal acts alleged to have been committed by these two persons. The acts alleged have been mentioned, which would indicate that the petitioner who is the Additional Superintendent of Police had demanded Rs.60,00,000/- as ransom for mediation. Another accused namely, Dhiraj Yewale, who acted as a tout and who was instrumental in obeying the orders of the petitioner and unlawfully detaining the complainant in the house of his relative, had negotiated to bring down the demand of the petitioner to Rs.25,00,000/-. Three cheques of Rs.6,00,000/-, Rs.7,00,000/- and Rs.8,00,000/- in the name of Purushottam Patel were said to have been forcibly taken from the complainant, despite he having stated that he does not have so much amount in his bank account so as to honour the cheques.

41. The first statement of Digambar Mali speaks of the manner in which the complainant was allegedly kidnapped under the directions of the petitioner, which were carried out by PSI Nimbalkar, who was armed with a service revolver. The narration made by the complainant to Digambar Mali mentions that the complainant was threatened with an encounter if he tried to flee or escape. In his supplementary statement, he has repeated what has been stated earlier, but has

added in the last paragraph that the petitioner had threatened the complainant that he would fire bullets to kill him if he did not part with Rs. 25,00,000/- as ransom.

42. In the fresh statement recorded by the complainant on 25.10.2011, indicates that though the material was already available, Section 364A was deleted only because this Court had made certain observations noted above. It is, therefore, apparent that the father-in-law of the complainant had specifically stated that the complainant was under the threat of being killed.

43. Subsequently, after the recording of additional statements of witnesses as well as the complainant and upon the order of the Honourable Apex Court, the State had granted the second sanction. The second sanction order, therefore, evidences the additional material that was placed on record through Digambar Mali, which was reproduced in the order passed by the sanctioning authority while granting the second sanction.

44. Considering the above, the submissions of Shri Deshmukh on the aspect of there being no additional material before the sanctioning authority while issuing the second sanction order, which appeared to be attractive at first blush, would not stand the test of scrutiny for the reason that the father-in-law of the complainant has stated that the petitioner had threatened the complainant that he would be fired with bullets and killed. So also, the effect of Section 161 will also have to be taken into account, coupled with the observations of this Court, which led the Investigating Officer to seek deletion of Section 364A. It is after the recording of Digambar Mali''s statement that the sanctioning authority included Section 364A in it''s second order, notwithstanding the fact that, legally a sanction is granted for prosecuting a public servant and not for applying a particular Section under the Indian Penal Code.

45. The learned PP has relied upon the judgment of the Honourable Apex Court in the Parkash Singh Badal''s case (supra) to contend that whether there was sufficient material available for granting a valid sanction, could only be scrutinized during the trial. Reliance is placed upon paragraphs 34, 35, 47 to 50 of the said judgment. It has been held in paragraphs 47 to 50 that the sanction granted by the competent authority is with regard to the acts that have been committed and which are set out in the FIR.

46. The Honourable Apex Court has noticed a distinction between the absence of a sanction and the invalidity of a sanction on account of non-application of mind. It would be apposite to reproduce paragraphs 47 to 50 of the Parkash Singh Badal''s judgment (supra), hereunder:-

"47. The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a

decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalised guidelines in that regard.

48. The sanction in the instant case related to the offences relatable to the Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial.

49. Great emphasis has been laid on certain decisions of this Court to show that even in relation to the offences punishable under Sections 467 and 468 sanction is necessary. The foundation of the position has reference to some offences in Rakesh Kumar Mishra case. That decision has no relevance because ultimately this Court has held that the absence of search warrant was intricately (sic linked) with the making of search and the allegations about alleged offences had their matrix on the absence of search warrant and other circumstances had a determinative role in the issue. A decision is an authority for what it actually decides. Reference to a particular sentence in the context of the factual scenario cannot be read out of context.

50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence."

47. The Honourable Supreme Court, in Rajmangal Ram case (supra) has concluded in paragraph Nos.7 to 11 as under:-

"7. In a situation where under both the enactments any error, omission or irregularity in the sanction, which would also include the competence of the authority to grant sanction, does not vitiate the eventual conclusion in the trial including the conviction and sentence, unless of course a failure of justice has occurred, it is difficult to see how at the intermediary stage a criminal prosecution can be nullified or interdicted on account of any such error, omission or irregularity in the sanction order without arriving at the satisfaction that a failure of justice has also been occasioned. This is what was decided by this Court in **State by Police Inspector v. T. Venkatesh Murthy : (2004) 7 SCC 763** (paras 10 and 11) wherein it has been inter alia observed that,

14. .....Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice.

8. The above view also found reiteration in **Parkash Singh Badal and Anr. v. State of Punjab and Ors. : (2007) 1 SCC 1** (para 29) wherein it was, inter alia, held that

mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. In Parkash Singh Badal (supra) it was further held that Section 19(1) of the PC Act is a matter of procedure and does not go to the root of jurisdiction. On the same line is the decision of this Court in **R. Venkatkrishnan v. Central Bureau of Investigation : (2009) 11 SCC 737**. In fact, a three Judge Bench in **State of Madhya Pradesh v. Virender Kumar Tripathi : (2009) 15 SCC 533** while considering an identical issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, this Court held that in view of Section 19(3) of the PC Act, interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of framing of charge but only after the trial has commenced and evidence is led (Para 10 of the Report).

9. There is a contrary view of this Court in **State of Goa v. Babu Thomas : (2005) 8 SCC 130** holding that an error in grant of sanction goes to the root of the prosecution. But the decision in Babu Thomas (supra) has to be necessarily understood in the facts thereof, namely, that the authority itself had admitted the invalidity of the initial sanction by issuing a second sanction with retrospective effect to validate the cognizance already taken on the basis of the initial sanction order. Even otherwise, the position has been clarified by the larger Bench in **State of Madhya Pradesh v. Virender Kumar Tripathi** (supra).

10. In the instant cases the High Court had interdicted the criminal proceedings on the ground that the Law Department was not the competent authority to accord sanction for the prosecution of the Respondents. Even assuming that the Law Department was not competent, it was still necessary for the High Court to reach the conclusion that a failure of justice has been occasioned. Such a finding is conspicuously absent rendering it difficult to sustain the impugned orders of the High Court.

11. The High Court in both the cases had also come to the conclusion that the sanction orders in question were passed mechanically and without consideration of the relevant facts and records. This was treated as an additional ground for interference with the criminal proceedings registered against the Respondents. Having perused the relevant part of the orders under challenge we do not think that the High Court was justified in coming to the said findings at the stage when the same were recorded. A more appropriate stage for reaching the said conclusion would have been only after evidence in the cases had been led on the issue in question."

48. It is, therefore, apparent that whether the sanctioning authority had applied it''s mind while arriving at a decision to grant the sanction could only be a subject matter of trial. Shri Deshmukh, in his submissions, is in agreement with this aspect, though he was tempted to request this Court for segregating the availability of the additional material as being a distinct aspect, from the application of mind to the material available while taking a decision of granting sanction. In this backdrop, my observations with regard to the additional material being available and the same being considered while granting sanction, would be construed to be a conclusion arrived at, at a prima facie stage.

49. However, my conclusion on the non-applicability of Section 161(1), (the petitioner had contended that as the sanction was granted after two years, it would be an invalid sanction) is a conclusion drawn by me on the merits of the said submission, keeping in view that the petitioner has attempted to pass off his actions under the colour of discharging his duties within the scope of his powers. The act of demanding ransom of Rs.60,00,000/- and keeping the complainant in illegal confinement under the threat of death after kidnapping him, would dis-entitle the petitioner of the protection under Section 161.

(D) Whether the petitioner in the instant case deserves to be discharged under Section 227 of the CrPC ?

50. The last issue is with regard to the plea of the petitioner that he be discharged and the Sessions Case No.131 of 2012 be quashed. In so far as the issue of sanction is concerned, I have already concluded that though the petitioner is not entitled to the protection under Section 161, the sanction granted would only be by way of an abundant precaution that the State has resorted to. The trial Court in the impugned order has, therefore, rightly concluded that whether the sanction was legally valid or not could be considered during the trial. On the issue of discharge, it is a settled law that if there is no material available to make out a case for trial, if the material available does not indicate commission of any offence and if it is ex facie visible that no offence has been made out against the accused, the plea for discharge could be entertained.

51. It is equally well settled that if there is some material available, which would indicate a triable offence against the accused, the Court dealing with an application for discharge under Section 227 read with Section 482 of the CrPC is not required to consider whether the material available would eventually lead to the conviction of the accused. The result of the trial is neither to be speculated nor is required to be perceived while deciding such an application. There are several factors in a trial of every case, which will lead to conviction or acquittal. There cannot be presumption that the offence may not be proved and the result of the trial is not be assessed by a Court, lest it would amount to prejudging the case.

52. The Honourable Apex Court in the case of Som Nath Thapa (supra) has observed in paragraph Nos.31 and 32 as under:-

"31. Let us note the meaning of the word "presume". In Black''s Law Dictionary it has been defined to mean "to believe or accept upon probable evidence". (Emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law "presume" means "to take as proved until evidence to the contrary is forthcoming", Stroud''s Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged." (Emphasis supplied). In Law Lexicon by P. Ramanath Aiyer the same quotation finds place at page 1007 of 1987 edition.

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

53. The Honourable Apex Court, in the case of Soma Chakravarty (supra) has observed in paragraph No.10 as under:-

"10. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of material on record the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial."

54. In the Amit Kapoor Case (supra), the Honourable Apex Court has concluded in paragraph No.19 as under:-

"19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well settled law laid down by this Court in the case of **State of Bihar v. Ramesh Singh :**

(1977) 4 SCC 39:

4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 226 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-... (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not: It the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory

of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

55. Prima facie, with the material available and the nature of the allegations against the petitioner, a case for trial has been made out. At this stage, however, neither the trial Court nor this Court is required to assess as to what would be result of the trial. Suffice it to say that the material available would surely indicate that the offences alleged against the petitioner deserve to be subjected to a trial as a triable offence has indeed been made out.

56. In the light of the above, this petition is dismissed. Rule is discharged.

57. At this stage, learned Advocate for the petitioner submits that since June 2016, the trial before the Sessions Court is not progressing. He, therefore, prays that this judgment be stayed for a period of eight weeks.

58. Learned Public Prosecutor Shri Girase submits that the trial was not stayed and that a statement was made on behalf of the prosecution that the matter would be adjourned and subsequently this Court also directed that the matter be adjourned. He opposes the request of Shri Deshmukh on the ground that the Honourable Apex Court (3 Judges'' Bench) by order dated 29.10.2014, has directed that the trial Court shall dispose off the trial as expeditiously as possible.

59. Upon considering the above and keeping in view that the Honourable Apex Court has directed the trial Court to dispose of the trial as expeditiously as possible vide it''s order dated 29.10.2014, request made by the petitioner is rejected.