

WWJMRD 2016; 2(6): 29-31
www.wwjmr.com
Impact Factor MJIF: 4.25
e-ISSN: 2454-6615

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Statutory safeguard regarding protection of public servants against prosecution: An overview

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Abstract

Civil servants are expected to discharge their duties and responsibilities without fear and favour. The law provides adequate protection to the public servant against any official work or duties discharged by him during duty hours. No court is authorized to take cognizance of such an officer without previous sanction from the authority competent who is empowered to remove such officer from office. The law has been enacted in order to provide adequate protection to civil servants. The provision of Section 21 of Indian Penal Code, 1860 defines the words "public servant" falling under the twelve categories. For being a public servant, it is not necessary to be an officer. Judges of High Court and Supreme Court are public servant. Employees of nationalized banks are also public servant. A teacher working in government service and paid by the Government is a public servant. Only public servants removable from office by sanction of Government may enjoy the protection of sanction under 197 of Cr.P.C. the act done in discharge of duty, however does not include the case of abuse of power. When the Dy. S.P. for instance alleged to commit an act of extortion and criminal intimidation, no sanction u/s 197 is required before taking cognizance. The relevant date, with reference to which a valid sanction sine quo non for taking cognizance of an offence committed by a public servant as required under Section 6, is the date on which the court is called upon to take cognizance of the offence. Sanction for prosecution must be taken u/s 197, Cr. P.C. or under the special act, as the case may be, before cognizance because sanction granted after cognizance is of no legal value. The plea of sanction can be raised at any stage including at the time of enquiry. The Magistrate, while hearing on the plea of sanction, cannot be confined only on this point but shall consider all materials available before him.

Keywords: Prosecution, Sanction, Public Servant

Introduction

Civil servants are expected to discharge their duties and responsibilities without fear and favour. Therefore, adequate protection of law has been provided to them against frivolous prosecution. But the public servants however are not totally immune from prosecution in case they abuse their power or exceed their jurisdiction with ulterior motives. A civil servant is answerable for his misconduct, which constitute an offence against the State of which he is a servant, and also liable to be prosecuted for violating the law of the land. Apart from various offences dealt with under Section 161 to 165 of IPC a civil servant is liable to be prosecuted also under Section 5 of the Prevention of Corruption Act, 1947. A civil servant may be prosecuted is found guilty of misconduct, which amounts to offences under the Penal law of the law. The competent authority may either prosecute him in a court of law or initiate a department proceeding or both simultaneously or successively. A civil servant has no right to say that because his conduct constitute an offence, he should be prosecuted only, without departmental proceeding nor he can say that he should be dealt with in a department enquiry alone.[1]

Sanction mandatory

The law provides adequate protection to the public servant against any official work or duties discharged by him during duty hours. No court is authorized to take cognizance offence against of such an officer without previous sanction from the authority competent to remove such officer from his office. In order to provide adequate protection to civil servants, the provisions of Section 197 of Criminal Procedure Code, 1973 has been enacted which categorically provides that no prosecution can be launched against civil servants without prior sanction of prosecution from the competent authority capable to remove him from office. The provision of Section 197 of Code of Criminal Procedure, 1973 bars the court

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from taking cognizance without previous sanction from the competent authority. Similar provision exists under Section 6 of the Prevention of Corruption Act, 1947, therefore, when a civil servant is prosecuted and convicted in the absence of the previous sanction of a competent authority, as prescribed under Section 6 (1) of the Act, the entire proceedings are invalid and the conviction is liable to be set aside.[2] The object behind enactment of Section 6 is to ensure that a public servant be not exposed to harassment from a speculative prosecution.[3]

The object of Section 6 (1) (c) of the Prevention of Corruption Act, 1947 as well as under Section 197 of the Criminal Procedure Code is to save the public servant from harassment by frivolous prosecution. The law intends that each and every aggrieved or disgruntled person should not be allowed to launch a criminal prosecution against a public servant to serve an ulterior motive. The protection is available to civil servant against prosecution launched even by state agencies but such protection is not absolute or unqualified. If the competent authority capable to remove such public servant from his office accords previous sanction, such prosecution can be instituted and proceeded with. [4]

Public Servant: Who are

The provision of Section 21 of Indian Penal Code, 1860 defines the words "public servant" falling under the twelve categories. The following test may determine whether a person is a public servant:-

- (i) He is in the service and pay of the Government; and
- (ii) He is entrusted with the performance of any public duty.[5]

For being a public servant, it is not necessary to be an officer.[6] Judges of High Court and Supreme Court are public servant.[7] Employees of nationalized banks are also public servant.[8] A teacher in government service and paid by the Government is a public servant.[9] Senior Divisional Manager and Asstt. Manager of National insurance company are public servant.[10]

Vice-Chancellor and other teaching and non-teaching employee of a University are public servant under the meaning of Section 2 (c) (xi) of Prevention of Corruption Act.[11] Cognizance of offence against a Professor of Patna University without sanction of prosecution by appointing authority (syndicate) is bad in law.[12] Criminals prosecution cannot be initiated against a public servant for alleged demand of bribes without prior sanction under Section 197, Cr.P.C.[13] These examples however, are just illustrative and not exhaustive.

The provisions of Section 32 (2) of the Representation of Peoples Act is akin to proviso under Section 197, Cr.P.C. requiring sanction as a condition precedent and provides a safeguard against the frivolous prosecution causing harassment to the public servants.[14]

Member of 'Senate' is a public servant u/s 19 of Universities Act but no sanction of prosecution is necessary if the person concerned not holding the post at the time of cognizance. [15] Employees of Electricity Board are not public servants. [16]

Sanction: when not required

Only public servants removable from office by sanction of Government. enjoy the protection of sanction under 197 of

Cr.P.C.[17] The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which provides protection to government servant against frivolous prosecutions. It must therefore be strictly complied with before any prosecution be launched against the public servant or officer of Government Companies or public undertakings. Even officers and employees of public undertakings on account of pervasive control of the Government, are entitled to protection of Section 197, Cr. P.C.[18]

Act done in discharge of duties does not include the case of abuse of power. When the Dy. S.P. is alleged to commit an act of extortion and criminal intimidation, no sanction u/s 197 is required before taking cognizance.[19]

Where accused police officer abused the complainant by obscene and filthy language, sanction under Section 197 is not necessary [20] When atrocities are committed by the police official during the course of investigation sanction for prosecution of the police official under Section 197 is necessary. Sanction is not required for the charge of criminal breach of trust by Government servants particularly where offences are not committed during the official duty.[21]

Sanction: when required

The relevant date, with reference to which a valid sanction *sine quo non* for taking cognizance of an offence committed by a public servant as required under Section 6, is the date on which the court is called upon to take cognizance of the offence.[22] The sanction has to be taken before the cognizance and sanction for prosecution is not a mere formality but an important matter and a pre-requisite condition to proceed with the criminal prosecution.[23] No sanction is necessary for prosecution if the accused public servant has retired from service after attaining the age of superannuation and he was not a public servant on the date of filing charge-sheet.[24]

Sanction for prosecution must be taken u/s 197, Cr. P.C. under the special act, as the case may be, before cognizance because sanction after cognizance is of no legal value.[25]

The plea of sanction be raised at any stage including at the time of enquiry and the Magistrate, while hearing on the plea of sanction, cannot be confined only on this point but shall consider all materials available before him.[26] The plea of sanction to launch prosecution can be raised during an inquiry under Section 202 also by the accused person.[27] The protection is available even if Magistrate refuses to drop the proceeding on the ground that offence was exclusively tribal by court of session.[28]

Conclusion

The protection of law requiring prior sanction is a special provision to provide protection to such public servant who performs their duty properly and honestly. It does not provide protection to those who abuse their powers to serve ulterior motives. The courts must be extremely careful while taking cognizance against public servants or when the plea of sanction is raised before them.

End Notes

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3. R.S. Nayak –V- A.R. Antulay; AIR 1984 SC 684.
4. Anti-corruption Bureau; Govt. of Maharashtra, Bombay

- V- K.K. Jigatiani; AIR 1996 SC 896.
5. S.V. Parulekar –V- D.M., Thane; AIR 1957 SC 23.
 6. State –V- Srinivasan; 1985 Cr. LJ (NOC)5.
 7. K. Neeraswami –V- Union of India; (1991) 3 SCC 655.
 8. Union of India –V- Ashok Mitra; AIR 1995 SC 1976.
 9. State of Ajmer –V- Shivaji Lal; AIR 1959 SC 847.
 10. S.P. Das –V- State of Bihar; (1990) Crimes 344 (Patna)
 11. Md. Salahuddin Sarwar –V- State of Bihar; 2000 (1) PLJR 64
 12. Ranvijay Kumar Singh –V- State of Bihar; 2006 (3) PLJR 192; Amar Kr. Singh –V- State of Bihar 2014 (4) BBCJ 455.
 13. Bishwant Singh –V- Birsai Bhagat, 2000 (2) PLJR 161
 14. Shahid Raza –V- The State of Bihar; 2008 (8) PLJR 444.
 15. Suresh Chandra Mookherjee –V- State of Bihar; 2003 (4) PLJR 136.
 16. Ashok Baske –V- State; 2008 Cr. LJ (NOC) 894 (Bom); (Contra view: Balbir Kr. Bagish –V- State of Bihar; 2008 Cr. LJ 1323 (Patna)).
 17. Shyam Sundar Pd. Srivastav –V- State of Bihar; 2006 (2) PLJR 350.
 18. Md. Hadi Raja –V- State of Bihar 1998 AIR SCC 1789.
 19. Ram Chandra –V- Nriyanjan Raut; 1992 Cr. LJ 3041 (Orissa).
 20. Prakash Chadnra Koji –V- State; 1998 Cr. LJ 923 (Cal.).
 21. Kewal Ram Chauhan –V- Prithipal Singh; 1988 (2) Crimes 95.
 22. Baijnath –V- State of M.P.; AIR 1966 SC 220.
 23. Veeraswami –V- Union of India; (1991) 3 SCC 655.
 24. Baijnath Gupta –V- State of M.P.; AIR 1966 SC 220 (Contra view: Janardan Rai –V- State; 2007 (1) BBCJ 24.
 25. Madan Singh –V- P.N. Basak; 1982 BBCJ 7;
 26. Ibid.
 27. P. Surya Rao (Dr.) –V- H. Annapurnamma; 1981 Cr. LJ 1191 (A.P.)

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