



**HIGH COURT OF ANDHRA PRADESH**  
**TUESDAY ,THE FOURTH DAY OF JUNE**  
**TWO THOUSAND AND NINETEEN**  
**PRESENT**  
**THE HONOURABLE SMT JUSTICE T. RAJANI**  
**CRIMINAL REVISION CASE NO: 837 OF 2018**

**Between:**

1. SAYYED AHAMED and 2 others occ.Asst.Engineer,  
R/o.H.no. 87/1037, Balajinagar, C.Camp, Kurnool, Kurnool District.
2. M.Gangadharam R/o.Yemmiganur, Kurnool District.
3. K.Ranga Rao CR and B Department, R/o.Yemmiganur, Kurnool District.

**...PETITIONER(S)**

**AND:**

1. THE STATE OF A.P., and another rep. by its Public Prosecutor, High  
Court at Hyderabad.
4. Kasipogu Nagaraju R/o.Mantralayam, Kosigi, Kurnool District.

**...RESPONDENTS**

**Counsel for the Petitioner(s): V SUBRAHMANYAM**

**Counsel for the Respondents: PUBLIC PROSECUTOR (AP)**

**The Court made the following: ORDER**



2019:APHC:15752

**HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI**

**TUESDAY ,THE FOURTH DAY OF JUNE  
TWO THOUSAND AND NINETEEN**

**PRESENT**

**THE HONOURABLE SMT JUSTICE T. RAJANI**

**CRL.RC No. 837 OF 2018**



Criminal Revision Case filed under Section 397 and 401 of Cr.P.C., aggrieved by the order dated 06-12-2017 made in CrI. MP. No. 3720 of 2017 in C.C. No. 242 of 2013 on the file of the Court of the 1st Additional Judicial Magistrate of First Class, Adoni, Kurnool District.

**Between:**

1. Sayyed Ahamed, S/o Sulthan Miya Occ: Asst. Engineer, R/o.H.No. 87/1037, Balajinagar, C, Camp, Kurnool, Kurnool District.
2. M.Gangadharam, S/o M. Gundappa, Occ: Deputy Executive Engineer, R & B Department R/o Yemmiganur, Kurnool District.
3. K. Ranga Rao, S/o K. Venkata Rao, Occ: Executive Engineer, C R & B Department, R/o.Yemmiganur, Kurnool District.

**Petitioners/Accused Nos. 1 to 3**

**AND**

1. The State of Andhra Pradesh, rep. by its Public Prosecutor, High Court at Hyderabad.

**Respondent**

2. Kasipogu Nagaraju, S/o Narasanna, Occ: Engineer, R/o Mantralayam, Kosigi, Kurnool District.

**Respondent/Complainant**

**IA NO: 1 OF 2018**

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in CC.No. 242 of 2013 on the file of the Court of the 1st Addl. Judicial Magistrate of First Class, Adoni, Kurnool District, pending disposal of the Criminal Revision Case.

**For the Petitioners: SRI. V. SUBRAHMANYAM**

**For the Respondent No.1: PUBLIC PROSECUTOR**

**For the Respondent No.2: None Appeared**

**The Court made the following Judgment:**

**SMT JUSTICE T.RAJANI****CRIMINAL REVISION CASE No.837 OF 2018****JUDGMENT:**

This revision is preferred questioning the order, dated 06.12.2017, in CrI.M.P.No.3720 of 2017 in C.C.No.242 of 2013 passed by the court of I Additional Judicial Magistrate of First Class, Adoni, by virtue of which the said court dismissed the petition, which was filed by the petitioners under Section 239 CrPC, seeking to dismiss the complaint for want of prior sanction from the District Collector, Kurnool as required under Section 197 CrPC.

2. The facts need to be stated briefly in order to understand whether the petitioners are alleged to have committed the offences in discharge of their official duty.

As per the complaint, the complainant is the Assistant Executive Engineer, R& B, since March, 2007. He has been working in Adoni Division as on that date and was holding additional charge of Mantralayam R & B Section from 27.07.2011. On 28.10.2011, the R & B Department gave a contract to A4 to lay metal and blacktop road of Rampuram-Kosigi-Halvi of 4.60 KMs. But A4 Company only laid metal road upto 4.14 KM and no black top road was laid. A4 company, in collusion with A1 to A3, who are the Assistant Engineer/work incharge officer, Deputy Executive Engineer R&B, Check Measuring & payment officer respectively, has received payment of Rs.68,82,000/- vide cheques, but the road corresponding to the



value of the said amount is not laid. There was a news item in the Eenadu newspaper with regard to the said deficit. An enquiry was caused by the departmental officers and A1 to A3 were suspended. Then the contractor, A4 laid the black top road.

3. Heard Sri Mohan Reddy, learned senior counsel appearing for the petitioners and the Public Prosecutor appearing for the 1<sup>st</sup> respondent. None appears for the 2<sup>nd</sup> respondent in spite of notice.

4. The counsel for the petitioners makes a subtle argument, in support of the contention that the alleged offences occurred during discharge of the official duty of the petitioners and hence, sanction as required under Section 197 CrPC is a precondition for prosecuting them.

5. The order of the court below reflects valid reasoning and has rightly made a distinction between the acts amounting to discharge of official duty and acts not amounting to. The counsel argues that as per the charge sheet, the road was nevertheless laid, but the allegation is that it was not properly laid. His argument is that if there is deficit, it has to be construed as improper discharge of official duty and hence prosecution based on such an allegation needs sanction. The contents of the charge sheet, unless they receive support from the material on record, cannot be relied upon. The charge sheet no doubt records that black top road up to 4.14 KMs was laid. But it only seems to be an erroneous observation made in the charge sheet. The statements, which form the basis for the charge sheet, are otherwise. LW1, who is the



complainant, in clear terms, stated that only metal road was laid upto 4.14 KMs and it is only after the deficit came to the notice of the public, by way of news in the newspaper, A4 hurriedly laid black top Road, which was not up to the mark. LWs.4 and 5 are the Sarpanch and VRO of Agasnur respectively. Both of them stated that after the news item appeared in the newspaper, there was an enquiry by the R&B authorities and both of them accompanied them during inspection by the R & B Authorities. They found that only metal road was laid by the date of said inspection and black top road was not laid. Their statements also show that they stated that A1 to A3 helped A4 in drawing the amount, by suppressing the fact that black top road was not laid.

6. Hence, the above material would clinchingly show that A1 to A3 are alleged to have colluded with A4 in permitting him to draw the amount knowing the fact that he did not comply with the terms of contract and violated the same, by not laying the black top road.

7. The contention of the counsel that there is no element of cheating and that the ingredients of Section 409 IPC are not attracted, in the light of the above findings, has to be held as merciless. The ruling of the Apex Court in **URMILA DEVI VS. YUDHVIR SINGH** in Criminal Appeal No.1822 of 2013 which was made on 23.10.2013, does not help the petitioners. At paragraph 15, the apex court relied on





three judge Bench decision of the apex court in **B.SAHA AND ORS.**

**V. M.S.KOCHAR<sup>1</sup>**), which held as under:

“Where this court held that while section 197 CrPC was capable of both liberal and narrow interpretations, a moderate and balanced approach was the correct way to interpret that provision to avoid an unfair advantage or disadvantage to the accused. This court, therefore, evolved the testy of a direct and reasonable connection between the official duty of the accused and the acts constituting the commission of offence. The Court observed: The words ‘any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty’ employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly. The section will be rendered altogether sterile, for, ‘it is no part of an official duty to commit an offence, and never can be’. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an Act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution and the said provision.”

8. Hence, it goes to support the opinion of this court that whether sanction under Section 197 of the Code is required or not, depends on the facts of that particular case, which comes before the court. The ruling of the apex court in **PROF.N.K.GANGULY VS. CBI, NEW DELHI** in Criminal Appeal No.798 of 2015 also supports the said view, as the court, while dealing with the issues that came up before the apex court, held as under:

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<sup>1</sup> 1979(4) SCC 177



“It is not that every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable. (Emphasis laid by the Court). In the case of B.Saha v. M.S.Kochar, the constitution Bench of this court observed that the question of sanction under Section 197 CrPC could be raised and considered at any stage of proceedings...”

9. Hence, sanctioning of amounts under the contract, which is not at all fulfilled, cannot be said to have been done in discharge of official duty. *Prima facie*, the allegation of collusion between A1 to A3 and A4 is evident from the statements of the witnesses which disclose that no black top road was laid at all. As held by the Constitutional bench of the Supreme Court, the question of requirement of sanction can be raised and decided any time during the pendency of the proceedings.

10. In view of the above, this court opines that the impugned order needs no interference.

11. With the above observations, the Criminal Revision Case is dismissed and the order, dated 06.12.2017, passed in CrI.M.P.No.3720 of 2017 in C.C.No.242 of 2013 passed by the court of I Additional Judicial Magistrate of First Class, Adoni, is hereby confirmed.



As a sequel, the miscellaneous applications pending, if any, shall stand closed.

SD/- C.V. MALLIKARJUNA VARMA  
DEPUTY REGISTRAR

//TRUE COPY//

*Q.1000*  
SECTION OFFICER

One Fair Copy to Hon'ble Smt Justice T. Rajani  
(for her Lordship's kind Perusal)

To,

1. The I Additional Judicial Magistrate of I Class Adoni, Kurnool District.
2. The Station House Officer, Kosigi Police Station, Kurnool District.
- ~~3.~~ 9 LR Copies.
4. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
5. The Secretary, Andhra Pradesh Advocates Association, Library, High Court Buildings, Hyderabad.
6. One CC to SRI. V. SUBRAHMANYAM Advocate [OPUC]
7. Two CCs to the PUBLIC PROSECUTOR, High Court of Andhra Pradesh, Amaravathi.
8. Two CD Copies
- Chp  
9. The section officer, v.R section. High court of A.P.





HIGH COURT

2019:APHC:15752

DATED:04/06/2019

RS. 10,500

ORDER

CRLRC.No.837 of 2018

(7)

DISMISSING THE Cri. R.C.

$\frac{18}{T_2}$  17/6/2019