IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION APL NO.653 of 2025

1. Shri Mahesh s/o Dattatraya
Chate, aged about 60 years, occupation:
retired, r/o house No.95/D, Anant
Nagar, Behind SBI Colony, Nagpur.

2. Shri Vikram s/o Mahadeo
Sali, aged about 45 years, occupation:
Government Service, r/o Karad,
Satara. ..... **Applicants.**

:: **V E R S U S** ::

Anup s/o Subhashchandra Jaiswal,
aged about 45 years, occupation: business,
r/o Krushna Nagar, Wardha.
(Complainant). ..... **Non-applicant**.

==========

Shri Kartik Shukul, Counsel for the Applicants
Shri J.B.Kasat, Counsel for the Non-applicant.

==========

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 12/01/2026
PRONOUNCED ON : 28/01/2026

JUDGMENT

1. Heard learned counsel Shri Kartik Shukul for the applicants and learned counsel Shri J.B.Kasat for the non-

applicant. **Admit**. Heard finally by consent of learned counsel for the parties.

2. By the present application, the applicants are seeking quashing and setting aside Regular Criminal Case No.338/2013 pending before learned Joint Civil Judge Junior Division and Judicial Magistrate First Class, Court No.2, Wardha and quashing and setting aside order of issuance of process against the applicants.

3. The applicant No.1 is retired police officer and applicant No.2 is working in the police department and at the relevant time was posted as Sub Divisional Police Officer at Wardha. As per the contention of the non-applicant (the complainant), he was arrayed as accused in connection with Crime No.139/2013 registered with the Wardha City Police Station for offences under Sections 180 and 353 of the IPC and under Sections 33/131, 115, 116, and 117 of the Maharashtra Police Act. In the said crime, he was arrested

and produced before learned Magistrate at Wardha on 25.3.2013. During enquiry, at the time of the remand, he was subjected to police atrocities during the police custody, due to which he sustained severe injuries. Therefore, by order of learned Magistrate, he was referred for medical examination and, thereafter, his statement was recorded and report was forwarded to Principle District and Sessions Judge, Wardha to conduct an enquiry into the allegations made by the complainant. Accordingly, one person committee was constituted and the enquiry report was submitted on 18.5.2013. On the basis of the complainant's statement and the aforesaid medical and enquiry reports, learned Magistrate took cognizance under Section 190 of the Code of Criminal Procedure and directed the complainant to submit his list of witnesses. The complainant filed list of witnesses. After hearing the complainant, learned Magistrate was pleased to issue process by passing order on 31.8.2013 against the applicants under Section 323 read with 34 of the IPC.

Learned Magistrate has also issued the process against the applicants.

4. Being aggrieved and dissatisfied with the order of issuance of process and of taking cognizance, the complainant challenged the said order in revision bearing Criminal Revision No.91/2013 on the ground that the order of issuance of process under Section 323 of the Code is contrary to the medical evidence as he has sustained grievous hurt in the alleged incident. The said revision was allowed and in view of the order passed by learned Additional Sessions Judge, Wardha, process was issued against the applicants under Section 326 read with 34 of the IPC. Being aggrieved and dissatisfied with the same, the present application is filed by the applicants.

5. Learned counsel for the applicants submitted that taking cognizance by learned Magistrate, in absence of sanction required under Section 197 of the Code itself is

illegal and erroneous. The alleged incident at all has not taken place. However, even if it is taken into consideration, the act committed by the applicants is while discharging the official duty and, therefore, the sanction is must.

He further invited my attention towards the provisions under Section 22Q of the Maharashtra Police Act deal with powers and functions of the State Police Complaints Authority and under Section 22R(2)(c) of the Maharashtra Police Act which deals with Authority of the State Government on submissions of the report.

He further invited my attention towards the medical certificate and submitted that initial medical certificate nowhere shows any grievous injuries on the person of the complainant. He submitted that the medical certificate nowhere discloses that the injured has sustained grievous injuries like fracture. In subsequent certificates, the complainant has brought it on record. He invited my

attention towards CT Scan Report which shows that "no pleural or pulmonary lesion" is noted. The CT Scan report dated 1.4.2013 also shows that there is no evidence of fracture of 11th Rib of left side. He submitted that admittedly, the complainant was treated in "Acharya Vinoba Bhave Rural Hospital, wherein initially there was no finding of any fracture on the person of the injured and subsequently this report was brought by the complainant, which shows the case of the complainant is doubtful. In fact, cognizance taken by learned Magistrate, in absence of the sanction, itself is illegal and liable to be quashed and set aside.

6. In support of his contentions, learned counsel for the applicants placed reliance on the decision of the Hon'ble Apex Court in the case of **G.C.Manjunath and ors vs. Seetaram, reported in (2025)5 SCC 390.**

7. *Per contra*, learned counsel for the non-applicant supported the orders passed by learned Magistrate and

learned Additional Sessions Judge, Wardha directing to register the offence against the applicants Section 326 read with 34 of the IPC. He submitted that the medical reports filed on record along with reply show that the complainant was admitted in the hospital on a complaint of police atrocities. The medical certificate has noted fracture of 11th Rib. The CT Scan Report also shows that there was communicated fracture on left side of 11th Rib. Thus, the allegations levelled by the complainant are supported by the medical evidence and thus, the application is devoid of merits and liable to be rejected.

8. Before considering the factual position, it is necessary to refer the legal position concerning the circumstances requiring sanction under Section 197 of the Code.

9. Learned counsel for the applicants placed reliance on the decision of the Hon'ble Apex Court in the case of

G.C.Manjunath and ors vs. Seetaram *supra* wherein it has been observed, as under:

> "Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a policeman assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However, if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

It has been further observed, as under:

> "If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of the government sanction for initiation of criminal action against him".

10. While dealing with the provisions of Section 197 of the Code, the observations in paragraph Nos.65 to 77 in the case of **D.Devaraja vs. Owais Sabeer Hussain, reported in (2020)7 SCC 695** are relevant, which are reproduced as under:

> "65. The law relating to the requirement of sanction to entertain and/or take cognizance of an offence, allegedly committed by a police officer under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka

Police Act, is well settled by this Court, inter alia by its decisions referred to above.

66. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the Government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate Government.

67. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the

Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a policeman assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However, if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

68. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of the

government sanction for initiation of criminal action against him.

69. The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.

70. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.

71. If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate Government is obtained under Section 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act.

72. On the question of the stage at which the trial court has to examine whether sanction has been obtained and if not whether the criminal proceedings should be nipped in the bud, there are diverse decisions of this Court.

73. While this Court has, in D.T. Virupakshappa [D.T.Virupakshappa v. C. Subash, (2015) 12 SCC 231 : (2016) 1 SCC (Cri) 82] held that the High Court had erred [D.T.Virupakshappa v. C. Subash, 2013 SCC OnLine Kar 10774] in not setting aside an order of the trial court taking cognizance of a complaint, in exercise of the power under Section 482 of the Criminal Procedure Code, in Matajog

Dobey [Matajog Dobey v. H.C. Bhari, AIR 1956 SC 44 : 1956 Cri LJ 140] this Court held that it is not always necessary that the need for sanction under Section 197 is to be considered as soon as the complaint is lodged and on the allegations contained therein. The complainant may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty and/or under colour of duty. However, the facts subsequently coming to light in course of the trial or upon police or judicial enquiry may establish the necessity for sanction. Thus, whether sanction is necessary or not may have to be determined at any stage of the proceedings.

74. It is well settled that an application under Section 482 of the Criminal Procedure Code is maintainable to quash proceedings which are ex facie bad for want of sanction, frivolous or in abuse of process of court. If, on the face of the complaint, the act alleged appears to have a reasonable relationship with official duty, where the criminal proceeding is apparently prompted

by mala fides and instituted with ulterior motive, power under Section 482 of the Criminal Procedure Code would have to be exercised to quash the proceedings, to prevent abuse of process of court.

75. There is also no reason to suppose that sanction will be withheld in case of prosecution, where there is substance in a complaint and in any case if, in such a case, sanction is refused, the aggrieved complainant can take recourse to law. At the cost of repetition, it is reiterated that the records of the instant case clearly reveal that the complainant alleged of police excesses while the respondent was in custody, in the course of investigation in connection with Crime No.12/2012. Patently, the complaint pertains to an act under colour of duty.

76. Significantly, the High Court has by its judgment [H.Siddappa v. Owais Sabeer Hussain, 2018 SCC OnLine Kar 3805] and order observed : (H. Siddappa case [H. Siddappa v. Owais Sabeer

Hussain, 2018 SCC OnLine Kar 3805] , SCC OnLine Kar para 5)

> 5. ... it is well-recognised principle of law that sanction is a legal requirement which empowers the court to take cognizance so far as the public servant is concerned. If at all the sanction is absolute requirement, if takes
>
> cognizance it becomes illegal, therefore, an order to overcome any illegality the duty of the Magistrate is that even at any subsequent stages if the sanction is raised it is the duty of the Magistrate to consider.

77. In our considered opinion, the High Court clearly erred in law in refusing to exercise its jurisdiction under Section 482 of the Criminal Procedure Code to set aside the order of the Magistrate impugned taking cognizance of the complaint, after having held that it was a recognised principle of law that sanction was a legal requirement which empowers the court to take cognizance. The Court ought to have

exercised its power to quash the complaint instead of remitting the appellant to an application under Section 245 of the Criminal Procedure Code to seek discharge."

11. Thus, the following principles can be culled out in the case of **D.Devaraja vs. Owais Sabeer Hussain** *supra* :

"i. Sanction of the Government, to prosecute a Police Officer, for any act related to the discharge of an official duty, is imperative to protect the Police Officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the Government, to prosecute would give an upright Police Officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of CrPC.

ii. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he

can be prosecuted with sanction from the appropriate Government.

iii. Every offence committed by a Police Officer does not attract Section 197 of CrPC. The protection given under Section 197 of CrPC has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty. An offence committed entirely outside the scope of the duty of the Police Officer, would certainly not require sanction.

iv. If an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

v. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of the

government sanction for initiation of criminal action against him.

vi. The language and tenor of Section 197 of CrPC makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.

vii. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.

viii. If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate Government is obtained under Section 197 of CrPC".

12. Thus, in view of the judgment of the Hon'ble Apex Court in the case of **D.Devaraja vs. Owais Sabeer Hussain** *supra,* the protection under Section 197 of the Code has its limitation and the protection is available when the alleged act done by public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. An offence committed by Police Officer entirely outside the scope of the duty of the Police Officer, would certainly not require sanction. However, if the act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be. If in doing an official duty a policeman has acted in excess of

duty but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of the government sanction for initiation of criminal action against him. It has been very specifically held that sanction is required not only for acts done in discharge of official duty, the same is also required for an act purported to be done in discharge of official duty and or act done under colour of or in excess of such duty or authority. It has been held that to decide whether the sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. Thus, what is important criteria to decide whether sanction under Section 197 of the Code is necessary or not is that whether the act alleged is totally unconnected with the official duty or whether there is a reasonable connection with the official duty.

13. In another judgment in the case of **Gurmeet Kaur vs. Devender Gupta, reported in (2025)5 SCC 481,** the Hon'ble Apex Court dealt with the object and purpose of Section 197 of the Code, which reads as under:

> "A careful reading of Section 197 of the CrPC unequivocally delineates a statutory bar on the Court's jurisdiction to take cognizance of offences alleged against public servants, save without the prior sanction of the appropriate Government. The essential precondition for the applicability of this provision is that the alleged offence must have been committed by the public servant while acting in the discharge of, or purported discharge of, their official duties. The protective mantle of Section 197 of the CrPC, however, is not absolute; it does not extend to acts that are manifestly beyond the scope of official duty or wholly unconnected thereto. Acts bereft of any reasonable nexus to official functions fall outside the ambit of this safeguard and do not attract the bar imposed under Section 197 of the CrPC."

14. In light of the aforesaid judgments, the guiding principle governing the necessity of prior sanction stands well settled. The only enquiry required is, whether the impugned act is reasonably connected to the discharge of official duty. If the act is wholly unconnected or manifestly devoid of any nexus to the official functions of the public servant, the requirement of sanction is obviated. Conversely, where there exists even a reasonable link between the act complained of and the official duties of the public servant, the protective umbrella of Section 197 of the Code and Section 170 of the Police Act is attracted. In such cases, prior sanction assumes the character of a *sine qua non*, regardless of whether the public servant exceeded the scope of authority or acted improperly while discharging his duty.

15. Coming to the present case in hand, the allegations against the applicants are that while investigating the crime bearing No.139/2013 , they committed atrocities on

the complainant. As per the allegations in the said crime, against the complainant, when the police officials along with police staff had been to the Empress Club for conducting raid, they were obstructed while discharging the official duty and, therefore, the offence was registered. The allegations levelled by the complainant against the applicants are that after he was taken into the custody by the police officials, he was assaulted by removing his clothes, due to which he has sustained grievous injuries. The complainant was arrested in the said crime and produced before learned Magistrate. Before the Magistrate, he has made complaint about the atrocity. Learned Magistrate has referred him for medical examination. During medical examination it revealed that he has sustained fracture injury. The said injury was, as per the allegation, caused due to the assaulted by "stick". The medical papers produced on record show that he was treated in the hospital and finding was that, "*he has sustained blunt trauma on chest and fracture of 11th rib,*" which is

substantiated by CT Scan Report also. During the enquiry by the committee appointed by learned District and Sessions Judge, wherein also the assault at the hands of the applicants to the complainant revealed and, therefore, the directions were given by learned Magistrate to register the offence. As learned Magistrate has directed to register the offence under Section 323 of the IPC, the said order was challenged by the complainant and learned Additional Sessions Judge, considering the injury sustained in the nature of fracture injury, directed to register the offence Section 326 read with 34 of the IPC.

16. The allegations levelled against the accused are grave in nature that the accused abused the official authority and assaulted physically and ill-treatment to the complainant constituting acts of alleged police excess.

17. In the circumstances at hand, it is apparent that while conducting the investigation and enquiry with the

complainant, who was accused in Crime No.139/2013, the police officers have exceeded their acts. Thus, the allegations levelled against the accused, though grave, squarely fall within the ambit of "acts done under colour of, or in excess of, such duty or authority", and "acting or purporting to act in the discharge of his official duty", as envisaged under Section 197 of the CrPC.

18. The Hon'ble Apex Court in the case of **D.Devaraja vs. Owais Sabeer Hussain** *supra,* has observed that where a police officer, in the course of performing official duties, exceeds the bounds of such duty, the protective shield under the relevant statutory provisions continues to apply, provided there exists a reasonable nexus between the impugned act and the discharge of official functions. It has been categorically held that transgression or overstepping of authority does not, by itself, suffice to displace the statutory safeguard of requiring prior government sanction before prosecuting the public servant concerned.

19. In the present case, it is an admitted position that the complainant was arrayed as accused in the crime registered under Sections 180 and 353 of the IPC and under Sections 33/131, 115, 116, and 117 of the Maharashtra Police Act.

20. It is pertinent to note that pursuant to the recommendation and directions given by the Hon'ble Apex Court in the case of **Prakash Singh and ors vs. Union of India and ors, reported in (2006)8 SCC 1,** the Police Complaints Authority was constituted. Accordingly, the Maharashtra Police Act, 1951 was amended by the Maharashtra Police (Amendment and Continuance Act, 2014) and Sections 22Q(1)(a) and Section 22R were introduced apart from the other provisions. Accordingly, SPCA has been constituted by the State Government to entertain the complaints against police officers and police personnel who failed to perform their duties and functions. Section 22Q(1) reads as under:

"Section 22Q. - Powers and functions of State Police Complaints Authority.

(1) The State Police Complaints Authority shall exercise the powers and perform the functions as follows:-

(a) inquire suo-moto or on a complaint against Police Officers presented to it by, —

(i) a victim or any member of his family or any other person on his behalf;

(ii) the National or State Human Rights Commission; and

(iii) the police, into the complaint of,—

(i) death in police custody;

(ii) grievous hurt as defined under section 320 of the Indian Penal Code (45 of 1860);

(iii) rape or attempt to commit rape;

(iv) arrest or detention without following the prescribed procedure;

(v) corruption;

(vi) extortion;

(vii) land or house grabbing; and

(viii) any other matter involving serious violation of any provision of law or abuse of lawful authority;

(b) require any person to furnish information on such points or matters as in the opinion of the authority may be useful for or relevant to the subject matter of inquiry".

21. Section 22R(1) deals with the procedure followed by the SPCA on completion of enquiry.

Section 22R(1)(c) states that, "if the report of the State Police Complaints Authority discloses a prima facie case of commission of a cognizable offence, the State Government shall forward the same to the concerned Police Station and thereupon the same may be recorded as First Information Report under section 154 of the Code of Criminal Procedure, 1973.

22. In view of the above provisions, the aggrieved person against activities of the State Police Complaints can approach in view of Section 22Q of the Maharashtra Police Act.

23. It is very relevant and significant to note that Section 197 of the Code specifically provides that sanction of the Government is required if a public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, and in such a case no Court shall take cognizance of such offence except with the previous sanction of the concerned Government. Thus, what is required to determine whether in the light of the prima facie material which shows that the complainant has been subjected to police atrocities and whether in such a case the sanction is necessary. Thus, what is required to be considered is, whether such case will be covered under the term “while acting or purporting to act in the discharge of the official duty” of the Police Officials.

24. The Hon'ble Apex Court has laid down various principles guiding in which sanction under Section 197 of the Code is necessary. The protection under Section 197 of CrPC is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. It has been further held that an offence committed entirely outside the scope of the duty of the Police Officer, would certainly not require sanction. It has been further held that if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be. It has been further held that if in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of the government sanction for initiation of the

criminal action against him. It has been further held that the language of Section 197 of CrPC makes it absolutely clear that sanction is required not only for acts done in discharge of official duty but the same are for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.

25. Thus, test is whether the act is totally unconnected with the official duty or whether the act purported to be done in discharge of official duty. If the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law and in such a case sanction under Section 197 of CrPC is necessary.

26. In the case of **G.C.Manjunath and ors vs. Seetaram** *supra,* relied upon by the applicants, the similar ratio is laid down by the Hon'ble Apex Court. It has been held that for

determining the aspect whether sanction under Section 197 of the Code is necessary, the pivotal inquiry is whether the impugned act is reasonably connected to the discharge of official duty. If the act is wholly unconnected or manifestly devoid of any nexus to the official functions of the public servant, the requirement of sanction is obviated. Conversely, where there exists even a reasonable link between the act complained of and the official duties of the public servant, the protective umbrella of Section 197 of the Code is attracted. It has been further held that where a police officer, in the course of performing official duties, exceeds the bounds of such duty, the protective shield under the relevant statutory provisions continues to apply, provided there exists a reasonable nexus between the impugned act and the discharge of official functions. It has been categorically held that transgression or overstepping of authority does not, by itself, suffice to displace the statutory safeguard of requiring prior

government sanction before prosecuting the public servant concerned.

27. In view of the above legal position, even if the complaint and verification are perused, it is clear that the complainant has arrested by the concerned police personnel as the crime was registered against him. It appears that while doing official duty, policeman has acted in excess of duty and there is a reasonable connection between the act and performance of the official duty. The fact that the act alleged is in excess of duty will not be a ground to deprive the policemen of the protection of the government sanction for initiation of criminal action against them.

28. For the above reasons, the act of the applicants though grave squarely falls within the ambit of “acts done under colour of, or in excess of, such duty or authority”, and “acting or purporting to act in the discharge of his official duty”, as envisaged under Section 197 of the Code.

29. In view of that, Regular Criminal Case No.338/2013 pending before learned Joint Civil Judge Junior Division and Judicial Magistrate First Class, Court No.2, Wardha and order of issuance of process passed by the Magistrate require to be quashed and set aside.

30. At the same time, in the light of the law laid down by the Hon'ble Apex Court in the case of **Gurmeet Kaur vs. Devender Gupta** *supra,* the complainant is permitted to pursue his complaint after taking appropriate steps in accordance with law seeking sanction and, thereafter, he can be permitted to pursue his complaint. Accordingly, the application is **allowed** in the above terms.

Application stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!