

IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC AT  
MAHUDHA, DIST: KHEDA

CRIMINAL CASE NO. 466/2019

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The State of Gujarat ..... Complainant  
Versus  
Diptiben Prabodhchandra Gandhi & Others .....Accused  
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Appearance: LD. A.P.P. Mr. H.D. Vaghela for the State  
LD. Adv. Mr. Z. A. Gandhi for the Accused No. 1  
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**PRESIDED OVER BY : MR. K. R. MAURYA**

**ORDER BELOW APPLICATION EXH-06 FILED BY THE OPPONENT**

1] Present application has been preferred by the applicant requesting this Court to drop the proceedings against the accused no. 1 namely Diptiben Gandhi on the ground that the alleged offence was registered for an act she has done as her official duty and therefore as per Section 197 of the Code of Criminal Procedure this Court ought not to have taken cognizance. Therefore since the L.d predecessor court has erroneously taken cognizance of the offence in view of the specific bar U/s 197 of the Cr.P.C. and therefore the Accused No. 1 has filed the present application to drop the proceedings against her.

**Reply filed by the Ld. APP for the state:-**

2] Ld. A.P.P. has filed a reply at Exh-32 to the present application and submitted that not in every case the sanction as per the Section 197 of the CrPC is required to prosecute the public servant. It is the logic given by the Ld. APP that unless and until the public servant was authorized to do certain acts and in doing such an act any offence is registered then only the prior sanction U/s 197 of the CrPC is required. In this case the Accused No. 1 had not done her job as per the directions of the District Collector, Kheda and therefore the requirement U/s 197 of the CrPC is not for wrong doer. Further the act done by the Accused No.1 was out of her authority and therefore the Ld. APP requested this Court to reject the application.

**Arguments of Ld. Adv. Mr. Gandhi in support of present application:-**

3] The Ld. Adv. has submitted that the Accused No. 1 was gram talati and therefore was a public servant within the meaning of section 197 of the CrPC. Further the act for which the present offence was registered was done in her official duty of Talati. Further the Gram Talati did not play any role in misappropriation of money or condition breach. Therefore since the Accused No. 1-Talati was doing her official duty to monitor the task of cutting tree and depositing earnest mone and therefore the ground of prosecution against the Accused No. 1 was dereliction of duty and therefore when the alleged act was completely associated with the official duty and therefore the

Sanction U/s 197 was the condition precedent for initiating the prosecution against the Talati. In this case, the predecessor court took cognizance by issuing summons to the Accused No. 1 without complying with Section 197 of the CrPC. Therefore the same is erroneous and therefore the charges against the present Accused No. 1 is required to be dropped.

4] Further, the Ld. Adv. for the Accused has relied upon the Judgement **Raghunath Anant Govilkar Versus State Of Maharashtra reported in 2008 (0) AIJEL-SC 40473** wherein the Hon'ble Court observed as under:-

*11. The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is, if the conditions mentioned are not made out or are absent, then no prosecution can be set in motion. For instance, no prosecution can be initiated in a Court of Session under Sec. 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or unless the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Sec. 190 of the code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far public servants are concerned, the cognizance of any offence, by any court, is barred by Sec. 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and but it also specifies the conditions and*

*circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression "no court shall take cognizance of such offence except with the previous sanction". Use of the words 'no' and 'shall' make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. Cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word "cognizance" means 'jurisdiction' or "the exercise of jurisdiction" or power to try and determine causes'. In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during the discharge of his official duty.*

-Therefore in view of the aforesaid judgement, the Ld. Adv. requested the Court to drop the proceedings against the Accused No. 1 for non compliance of Section 197 of the CrPC.

### **REASONS:-**

5] Heard the Ld. APP, Ld Adv. for the Accused No. 1 and perused the record. It appears that the case of the prosecution is that to allot land to Anand Krushi University, the land bearing Block No. 81 area 43-22-06 the trees standing on that land were to be cut. Therefore upon request, the District Collector, Kheda vide his order dated 02.03.2010 appointed the Talati Minawada-present accused no. 1 as

Mantri to carry out an auction and take payment as per the conditions of the order dated 02.03.2010. Thereafter the auction was carried out, and the Accused No. 3 got the tender. Thereafter the Accused No. 1 did not pay the earnest amount i.e. 1/4 amount forthwith and the Accused No. 1 herein was to collect the 1/4 amount forthwith however she did not collect the amount immediately by citing reason of commission of cheque and thereafter she collected 1/4 amount to the tune of Rs. 15,00,000 on 25.03.2010. Therefore the Accused No. 1 is also joined as an accused.

6] Further, perusing the order dated 02.03.2010 by District Collector, Kheda, in Condition No. 10 it was mentioned that the Talati and the Sarpanch would be the responsible person if any misappropriation of money is alleged. Therefore perusing the same it appears that specific task was given to the Talati-present applicant that she had to collect the 1/4 amount of tender forthwith however the same was not done and as per the Condition No. 10 of the order dated 02.03.2010, the Talati was also held responsible for the alleged act and FIR was registered by the Incharge T.D.O. authorized by the D.D.O. i.e. the superior authority of the Talati itself. Further perusing the application of the Accused No. 1 itself makes clear that the present accused was held guilty in the departmental proceedings for dereliction of her duty and her two increments were stopped accordingly. Therefore it appears that the case of prosecution is dependent upon whether the Talati has done an act exceeding her authority.

7] It would be appropriate to discuss the issue involved in the present case in the light of judgements and guidelines given by the Hon'ble Constitutional Courts. In the case of **the State of Bihar and Ors. Vs. P. P. Sharma and Ors. [MANU/SC/0542/1992]** the Hon'ble Supreme Court, has observed as under:-

“64. .... The emphasis laid in both the sections are that no court shall take cognizance of offence against a public servant alleged to have committed while acting or purported to act in the discharge of official duty, except with previous sanction of the appropriate Government. **The object behind prior sanction is to prevent malicious, vexatious and unnecessary harassment to a public servant by laying false or frivolous accusation or prosecution. In other words, Sections 197(1) and 15-A and related sections intended to immune a public servant who discharges his duties honestly and diligently from the threat of prosecution.** Honest discharges of public duty would impinge adversely of the interests, acts or omissions of private persons who would be prone to harass in criminal proceedings and prosecution to demoralize a public servant.

-Considering the said observation, herein this the TDO authorized by the DDO has given a complaint against the present

accused. Therefore the question of malicious and vexatious complaints does not arise.

8] Further as per the allegation made by the prosecution, it appears that the Accused No. 1 was Gram Talati then and she has not acted as per the directions and conditions of the order dated 02.03.2010. Now there are two views possible or two probabilities as under:-

- (1) If the act is seen as mere procedural irregularity or delay in performing a tender-related duty, it could be argued as done while purporting to discharge official duty, attracting Section 197 protection.
- (2) If the prosecution alleged dishonest intention (e.g., to cause wrongful gain/loss, IPC Section 406/409/420), then such an act has to be treated as beyond the scope of official duty – because committing cheating or breach of trust is never an official function.

9] Now if the first condition is considered as discussed above then the sanction under Section 197 of the CrPC is the condition precedent before initiating any proceedings against the Accused No. 1. But if the second condition is to be believed then the same is not an act of her official duty. That means if the delay was part of a dishonest scheme for personal gain then Section 197 protection does not apply, and cognizance can be validly taken without sanction. Now if the delay in

accepting tender money is seen as part of Talati's administrative duty, then Section 197 bars cognizance without sanction, and the magistrate's action would be invalid. However, if the delay is alleged to be part of a dishonest or cheating, Section 197 doesn't apply, and the case can proceed. Now the question whether the intention of the Accused No. 1 was dishonest or out of any cheating scheme or with dishonest intentions can be only determined after recording of evidence. Therefore in the present case the dishonest intention is alleged but the same can be ascertained after recording of evidence of prosecution and if the prosecution succeeded in proving the fact that the offence alleged by Accused No. 1 was due to dishonest intention or for any personal gains then the same can not be considered to be an act of her official duty. Therefore, at this stage proceedings can not be dropped on the ground that the question of Sanction U/s 197 of Cr.P.C can be determined after recording of evidence.

**:: ORDER ::**

1. The present application at Exh-06 seeking dropping of the present criminal proceedings against the Accused No. 1 is hereby rejected.
2. No order as to cost.

**Place :- 20/08/2025**  
**Date :- Mahudha**

**[K. R. Maurya]**  
**Principal Civil Judge &**  
**J.M.F.C., Mahudha, Dist: Kheda**  
**JUDGE CODE : GJ01723**