

Legal Bars for Prosecution

(Sec. 195 to 199 CrPC)

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Part I

- 1.01. Section 195/340 CrPC when not attracted** : Where forged document (sale deed) was produced in evidence before court and the same was relied on by the party for claiming title to property in question, it has been held by the Supreme Court that since the sale deed had not been forged while it was in *custodia legis*, therefore, bar in Section 195 CrPC against taking of cognizance of offences u/s 468, 471 of the IPC was not attracted. See : **C.P. Subhash Vs. Inspector of Police, Chennai, 2013 CrLJ 3684 (SC)**. Ruling relied upon (i) Iqbal Singh Marwah vs. Minakshi Marwah, AIR 2005 SC 2119 (Constitution Bench).
- 1.02. Strictures against Sessions Judge, Rampur for not understanding the scope of Section 195/340 CrPC** : Strictures against Sessions Judge, Rampur were recorded by the Hon'ble Allahabad High Court for, contrary to the provisions of Section 195/340/344 CrPC, directing the SSP, Rampur in a judgment delivered in Sessions Trial to register and investigate FIR against the complainant/PW for having lodged false FIR against the accused person. See : **Lekhraj Vs. State of UP, 2008 (61) ACC 831 (All)**.
- 1.03.01. Witness may file complaint u/s 195-A CrPC if threatened by accused or any other person** : Threatening any witness to give false

evidence has been made offence w.e.f. 16.04.2006 punishable u/s 195A of the IPC with imprisonment upto 7 years or fine or with both. A witness threatened by the accused can file complaint u/s 195 CrPC as inserted w.e.f. 31.12.2009.

1.03.02. Procedure for witnesses in case of threatening etc. (Section 195-A CrPC) : Section 195-A CrPC reads thus : A witness or any other person may file a complaint in relation to an offence under section 195A of the IPC (45 of 1860).

1.04. Section 195(1)(b)(ii) CrPC would be attracted only when the offence was committed after the document was produced before the Court :

A Constitution Bench of the Hon'ble Supreme Court has held that the protection engrafted under Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in proceeding in any Court i.e. during the time when the document was in *custodia legis*. See :

- (i) **P. Swaroopa Rani Vs. M. Hari Narayana, AIR 2008 SC 1884**
- (ii) **Iqbal Singh Marwah Vs. Meenakshi Marwah, (2005) 4 SCC 370 (Five-Judge Bench)**
- (iii) **Sachidanand Singh Vs. State of Bihar, AIR 1998 SC 1121 (Three-Judge Bench).**

1.05. Bar of Section 195(1)(b)(ii) CrPC not attracted where forgery of document was committed before the document was produced in the Court : Bar of Section 195(1)(b)(ii) CrPC is not attracted where forgery of document was committed before the document was produced in the Court. See :

- (i) **Sada Singh Vs. State of UP, 2002 (1) JIC 817 (All)**

(ii) **Bahadur Vs. Chandra Bhushan, 2000 (40) ACC 559 (All)**

1.06. If the forged document is not produced before the Court, Section 195(1)(b)(ii) CrPC : Where the alleged forged deed of power of attorney was not produced or given in evidence in any Court, it has been held that Section 195(1)(b)(ii) CrPC was not attracted in the case and hence complaint for offence under Section 471 IPC by the Court was not required. See : **Sailendra Pradhan Vs. Vipparla Jyoti, 2006 CrLJ 1483 (Orissa)**

1.07. Section 195(1)(b)(ii) CrPC when not attracted to a forged document ?

Where accused had got his name mutated in revenue records by producing in the revenue court forged documents i.e. the death certificates etc. of the complainant and on coming to know, the complainant who was falsely shown by the accused to have died appeared and lodged FIR and after investigation a charge-sheet for the offences u/s 120-B, 420, 218, 466, 467, 468, 471 of the IPC was filed and the accused had taken the plea of Bar of prosecution u/s 195(1)(b)(ii) CrPC, it has been held by the Hon'ble Allahabad High Court that since the forgery of documents was committed before the documents were produced in court, therefore, Bar of prosecution u/s 195(1)(b)(ii) CrPC was not attracted. See : **Sada Singh Vs. State of UP, 2002 (1) JIC 817 (All).**

1.08. Action u/s 195/340 CrPC to be taken in only in the interest of justice and not to satisfy the grudge of a private litigant :

Even when an application is made by one of the parties, it becomes a matter between the court and the alleged perjurer. An action u/s 340 CrPC is undertaken in the interest of justice and not to satisfy the grudge of a private litigant. Every case of perjury need not result in prosecution. See :

(i) **Ashok Kumar Aggarwal Vs. Union of India, 2014 (84) ACC 244 (SC)**

(ii) **Zeba Khalil Vs. State of UP, 2006 (54) ACC 354 (All)(DB).**

1.09. Court can act suo motu u/s 195/340 CrPC : Action u/s 195/340 CrPC should be taken only when the court on objective consideration of the entire facts and circumstances is of the belief and opinion that the interest of justice so requires. The court may act *suo motu* also. See : **Zeba Khalil Vs. State of UP, 2006 (54) ACC 354 (All)(DB).**

Part II

1.01. Section 197 CrPC when attracted? : 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 any thing done by them in the discharge of their official duties without rescannable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. But 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. 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 this 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. Use of the expression, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. See : **Center for Public Interest Litigation & Another Vs. Union of India & Another, AIR 2005 SC 4413 (Three-Judge Bench).**

1.02. Sanction u/s 197 CrPC not required when sanction u/s 19 of the PC Act, 1988 has already been granted : A Full Bench of the Hon'ble Allahabad High Court has held as under :

- (i) For prosecution under PC Act, 1988, once sanction u/s 19 of the said Act is granted, there is no necessity for obtaining further sanction u/s 197 of the CrPC.
- (ii) Where a public servant is sought to be prosecuted under the PC Act, 1988 read with Section 120-B IPC and sanction u/s 19 of the PC Act, 1988 has been granted, it is not at all required to obtain sanction u/s 197 CrPC from the State Government or any other authority merely because the public servant is also charged u/s 120-B IPC
- (iii) The offences under the PC Act, 1988 as well as charge of criminal conspiracy cannot be said to constitute "acts in discharge of official duty". See : **Full Bench Judgment dated 25.01.2006 of the Hon'ble Allahabad High Court delivered in Criminal Revision No. 22882/2004, Smt. Neera Yadav Vs. CBI (Bharat Sangh).**

1.03. Authority competent to grant sanction u/s 19 of the P.C. Act, 1988 can also grant sanction u/s 197 CrPC : Sanction required under Section 197 CrPC and sanction required under the 1988 Act stand on different

footings. Whereas sanction under the Penal Code in terms of the Code of Criminal Procedure is required to be granted by the State; under the 1988 Act it can be granted also by the authorities specified in Section 19 thereof. It is not in dispute that the Deputy Inspector General of Police was the competent authority for grant of sanction as against the respondent R in terms of the provisions of the 1988 Act. The State, thus, could not have interfered with that part of the said order whereby requisite sanction had been granted under the 1988 Act. The contention to the effect that the order of sanction passed by the Deputy Inspector General of Police was a composite one and, thus, the State could cancel the same, is unacceptable. Offences under the Penal Code and offences under the 1988 Act are different and distinct. On the face of the allegations made against R, they do not have any immediate or proximate connection. The test which is required to be applied in such a case is as to whether the offences for one reason or the other punishable under the Penal Code are also required to be proved in relation to offences punishable under the 1988 Act. If the answer to the said question is rendered in the negative, the same test can be applied in relation to a matter of sanction. See : **Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294** (*paras 11 & 12*).

- 1.04. Test for necessity of composite sanction u/s 19 of the P.C. Act, 1988 and u/s 197 CrPC also** : Test to determine for sanction order to amount to a composite order, there must be an immediate or proximate connection between the P.C. Act and the IPC offences for which accused is charged. The test to be applied in such a case would be whether the offences under IPC are also required to be prove in relation to the offences under the P.C.

Act, 1988. See : **Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294.**

2.1. Retired Public Servant & Sec. 197 CrPC : If the accused public servant had ceased to be a public servant on the date when the court took cognizance of the offences under the P.C. Act, Section 197 Cr.P.C. is not attracted. See

- (i) **State of Orissa V. Ganesh Chandra Jew, (2004) 8 SCC 40.**
- (ii) **State of Himachal Pradesh V. M.P. Gupta (2004) 2 SCC 349**
- (iii) **S.K. Zutshi V. Sri Bimal Debnath, 2004 (50) ACC 198 (SC)**

2.02. Sanction u/s 197 CrPC required only when the offence committed is attributable to or has direct nexus with the official duty of the public servant : Whereas an order of sanction in terms of Section 197 CrPC is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith, but the same would not be necessary when the offence complained of has nothing to do with the same. A plea relating to want of sanction although desirably should be considered at an early stage of the proceedings, but the same would not mean that the accused cannot take the said plea or the court cannot consider the same at a later stage. Each case has to be considered on its own facts. Furthermore, there may be cases where the question as to whether the sanction was required to be obtained or not would not be possible to be determined unless some evidence is taken, and in such an event, the said question may have to be considered even after the witnesses are examined. See : **Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294 (para 33).**

2.03. Stage of raising plea of sanction : Interpreting the provisions u/s. 196, 197, 156, 196(1-A) Cr.P.C., it has been held by the Supreme Court that

the plea of sanction can be raised at the time of taking cognizance of the offence or any time thereafter. But the plea of sanction cannot be raised or Sec. 197 Cr.P.C. is not attracted at the stage of registration of FIR, investigation, arrest, remand of the accused u/s. 167 Cr.P.C. or submission of the police report u/s. 173(2) Cr.P.C. When a case is under IPC and PC Act, 1947, question as to need of sanction u/s. 197 Cr.P.C. not necessarily to be raised as soon as the complaint is lodged. It can be raised at any stage and from stage to stage. If the cognizance of the offence has been taken without sanction, the plea of want of sanction can be raised by the accused after the commitment of the case and when the accused are called upon to address the court u/s. 227 and 228 Cr.P.C. See-

1. **State of Karnataka vs. Pastor P. Raju, AIR 2006 SC 2825**
 2. **K. Kalimuthu vs. State by DSP, 2005 (3) SCJ 682**
 3. **Birendra K. Singh v. State of Bihar, 2000 (4) ACC 653 (SC)**
- 2.04. **Court may when defer to decide the question of sanction u/s 197 CrPC at a later stage of the case ?** : In a case where ex facie no order of sanction has been issued when it is admittedly a prerequisite for taking cognizance of the offences or where such an order apparently has been passed by the authority not competent therefor, the court may take note thereof at the outset. But where the validity or otherwise of an order of sanction is required to be considered having regard to the facts and circumstances of the case and furthermore when a contention has to be gone into as to whether the act alleged against the accused has any direct nexus with the discharge of his official act, it may be permissible in a given situation for the court to examine the said question at a later stage.

See : **Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294** (para 38).

2.05. Stage of necessity of sanction in complaint case : In the case noted below, the accused, a police officer, had conducted a search without warrant and Magistrate had taken cognizance against him of the offences u/s 342, 389, 469, 471, 120-B IPC without sanction for prosecution u/s 197 CrPC. The Hon'ble Supreme Court held that in the above case, sanction u/s 197 CrPC for prosecution of the police officer was necessary. Protection of Section 197 CrPC is available to a public servant 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. Therefore, the concept of Section 197 CrPC does not get immediately attracted on institution of the complaint case. The test to determine whether omission or neglect to do that act would have brought on the charge of dereliction of his official duty. See :

(i) **Rakesh Kumar Mishra Vs. State of Bihar (2006) 1 SCC 557**
(paras 6 & 13)

(ii) **Center for Public Interest Litigation Vs. Union of India, AIR 2005 SC 4413.**

2.06. Public servant & sanction : A public servant cannot be prosecuted for acts done in connection with his official duty. See : **Jaya Singh vs. K.K. Velayutham, 2006 (55) ACC 805 (SC).**

2.07. Sanction against retired public servant not required : If the public servant has ceased to be a public servant on the date of cognizance of the offence by the court, sanction for his prosecution is not required. See. **R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684 (Five-Judge Bench).**

2.08. Sanction for prosecution of a retired public servant is essential u/s 197 CrPC but not for offences under P.C. Act, 1947 or P.C. Act, 1988

: Necessity of obtaining sanction u/s 197 CrPC for prosecution of a retired public servant is must. But an accused facing prosecution for offences under the P.C. Act, 1947 or the P.C. Act, 1988 cannot claim any immunity on the ground of want of sanction if he ceased to be a public servant on the date when the court took cognizance of the said offences. The correct legal position, therefore, is that an accused facing prosecution for offences under the old P.C. Act, 1947 or the new P.C. Act, 1988 cannot claim any immunity on the ground of want of sanction if he ceased to be a public servant on the date when the court took cognizance of the said offences. But the position is different in cases where Section 197 CrPC has application. See : **Rakesh Kumar Mishra Vs. State of Bihar, (2006) 1 SCC 557** (*paras 16, 17, 18 & 21*)

2.9. Error in sanction when not material : In the absence of anything to show that the error or irregularity in sanction u/s 19 of the P.C Act, 1988 has caused failure of justice and once cognizance has been taken, it can not be said that cognizance has been taken on invalid police report. See : **Ashok Tshering Bhutia Vs. State of Sikkim, 2011 CrLJ 1770 (SC)**

2.10. Sanction when public servant holding more than one public office : Where the public servant was holding more than one public office and the question of sanction for misusing or abusing one of his public offices arose, it has been held by the Hon'ble Supreme Court that sanction of authority competent to remove him from office allegedly misused or abused alone is necessary and not of all competent authorities. See : **R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684 (Five-Judge Bench).**

- 2.11. Stage of sanction u/s 197 CrPC :** In a case of trial of accused for offences u/s 18 (a) (i) read with Sec. 27, 27-A, 17-C of the Drugs & Cosmetics Act, 1940, it has been held by the Supreme Court that the question of sanction u/s 197 Cr PC for prosecution should be left open to be decided by the trial judge at the end of the trial. See : **State of Maharashtra Vs. Deva Hari Deva Singh, 2009 (64) ACC 117 (SC).**
- 2.12. Stage of sanction u/s 197 CrPC :** Question of validity of Sanction u/s 19 of the P.C. Act, 1988 can be raised at an earlier stage of proceedings. After the order of remand passed by the High Court, the Special Judge acted upon and entertained the matter. See : **CBI Vs. Ashok Kumar Aggarwal, 2014 (84) ACC 252 (SC).**
- 2.13. Sanction u/s 19 of the P.C. Act, 1988 not required if the criminal conspiracy is to commit offences punishable with imprisonment for two years or above :** Sanction u/s 19 of the P.C. Act 1988 not required if the criminal conspiracy is to commit offences punishable with imprisonment for two years or above. See : **Shiv Nandan Dixit Vs. State of UP, (2003) 12 SCC 636.**
- 2.14. Speaker competent to grant sanction of prosecution of Member of Parliament:** Speaker of Lok Sabha and Chairman of Rajya Sabha are competent to grant sanction of Member of Parliament. See: **P. V. Narsimha Rao Vs. State, CBI, (1998)4 SCC 626(Constitution Bench)**
