IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1897 of 2022

Arising Out of PS. Case No.-238 Year-2014 Thana- KADAMKUAN District- Patna

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MR. S. KUMAR @ SHAILESH KUMAR Son of Shri Moti Lal Resdient of Flat No. - G- 02, Friends Suman Vatika, Opposite S.B.I. Bank, Rajendra Nagar, Naya Chak, P.s.- Kadam Kuan, District - Patna. At Present Posted as Deputy Secretary, Department of Health, Government of Bihar, Patna.

... ... Petitioner

Versus

1. The State of Bihar
2. Milan Kumar Sudhakar S/O Late Ramvilas Yadav , Resident of Village- Ali Nagar, P.S. - Bahera, District - Darbhanga. At Present Resident of - E/17, Road No. 12, Rajendra Nagar, P.S. - Kadam Kuan, District - Patna. Power of attorney Holder of Dr. Gyan Kaur Yadav W/O Late Desh Gaurav Yadav

... ... Opposite Parties

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Appearance :
For the Petitioner : Mr. Rajesh Kumar Mishra, Advocate
Mr. Rohit Raj, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

C.A.V. JUDGMENT

Date : 21-01-2026

Despite valid service of notice, none has appeared on behalf of the opposite party no.2.

2. The present application is filed invoking the inherent jurisdiction of this Court under section 482 of the Criminal Procedure Code (hereinafter ‘Cr.P.C.’) for quashing the order contained in memo No.S.P.-25/2019-95/J dated 28.12.2020, passed by the Secretary, Department of Law, Government of Bihar whereby sanction for prosecution under section 420, 467, 468, 471, 120-B of the Indian Penal Code, has

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been granted against the present petitioner in connection with Kadamkuan P.S. Case No. 238 of 2014 registered on 24.05.2014.

3. Subsequently, during the pendency of this petition, the petitioner has preferred to move an Interlocutory Application bearing I.A. No. 01 of 2024 seeking amendment in the prayer portion of this petition and assailed the F.I.R vide Kadamkuan P.S. Case No. 238 of 2014 and also the charge-sheet bearing No.533 of 2021 filed against the petitioner.

4. The Complaint Case No.25889 of 2014 was filed on 04.04.2014 in the Court of learned C.J.M., Patna by the complainant namely, Milan Kumar Sudhakar in the capacity of power of attorney holder of his grandmother, Dr. Gyan Kaur Yadav, against two accused persons namely S. Kumar, the instant petitioner and one Sitaram Chaudhary.

5. In the aforesaid complaint petition, the complainant states that power of attorney (hereinafter 'POA') was executed in the year 2011 and 2013 by the principal one Dr. Gyan Kaur Yadav in his favour to look after her property including her family home, i.e., a three storeyed building situated at B/17, Road No. 12, Rajendra Nagar, Patna since the principal along with her family was living in the United

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Kingdom.

6. Further, it is stated that the principal had acquired the aforesaid property at Rajendra Nagar, Patna from her husband, namely Dr. Desh Gaurav Yadav, who had passed away in the year 2008, through a registered deed in her favour, which was executed in presence of the witness namely one Kumar Indradev in the year 1985. Subsequently the aforesaid property was duly mutated in the name of the principal-Dr. Gyan Kaur Yadav. The husband of the principal much prior to his death in the year 1999, had executed a POA in favour of the aforesaid Kumar Indradev to look after the property situated at Rajendra Nagar. It is also stated that the principal Dr. Gyan Kaur Yadav and her husband had two sons namely Gurvindar and Surender and one daughter Manjit Kaur.

7. It is thereafter alleged that on the strength of the POA when the complainant went to deposit the holding tax with the Patna Municipal Corporation, it has come to his knowledge that the said property at Rajendra Nagar was mutated in the name of one Kumar Gyanendra who was said to be the son of late Dr. Desh Gaurav Yadav, whereas he was actually the son of the aforesaid Kumar Indradeo, who was previously given POA by the husband of the principal, i.e., late

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Dr. Desh Gaurav Yadav in his lifetime. Upon learning of this illegal mutation, the complainant filed an application under the Right to Information Act, 2005 before the Bankipur Circle Office and received a response that the name of Kumar Gyanendra was mutated vide Mutation No. 288/19A/2004-05 in Circle No. 29, Holding No. 687 in the year 2005 itself. It is alleged that the aforesaid illegal mutation in favour of Kumar Gyanendra was effected asserting falsely that he was the son of Dr. Desh Gaurav Yadav however, he was the son of the aforesaid Kumar Indradev. The complainant accordingly informed the principal Dr. Gyan Kaur Yadav and thereafter upon instructions of the aforesaid principal, the complainant filed a complaint case No. 1118 of 2012 against Kumar Indradeo and his son Kumar Gyanendra, wherein cognizance was taken under sections 420, 467, 468, 471, and 120B of the IPC against the aforesaid two persons and the complainant also filed an Appeal against the illegal mutation, before the Commissioner, Patna Municipal Corporation, which was numbered as Appeal No. 17 of 2012. The Additional Commissioner, Patna Municipal Corporation had remanded the matter back to the Executive Officer for fresh consideration holding that the house owner was neither informed nor the succession was minutely examined.

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Further, the Additional Commissioner also duly noted that the house owner (principal) Dr. Gyan Kaur Yadav was shown to have passed away on 07.11.2004 whereas a VISA was issued to her on 27.12.2007.

8. The complainant thereafter alleges that the present petitioner-the Executive Officer in connivance with other accused persons got a report dated 16.02.2013 from the Revenue Officer wherein the aforesaid Kumar Gyanendra was falsely and incorrectly shown to be the son of the husband of the principal Dr. Desh Gaurav Yadav and they have deliberately ignored the documents adduced by the complainant such as, family certificate issued at Darbhanga proving that Kumar Gyanendra was not the son of the husband of the principal, i.e., late Dr. Desh Gaurav Yadav. It is alleged in the complaint that subsequently, the petitioner in connivance with other accused persons passed a cryptic order wherein the further proceedings were stayed till the disposal of the Title Suit No. 507 of 2011 to unduly favour Kumar Gyanandra and his faher Kumar Indradeo. It is also alleged that the accused persons in collusion with Kumar Gyanandra and his father Kumar Indradeo also issued holding tax receipts bearing the name of Kumar Gyanandra wherein his parentage was shown incorrectly as Dr. Desh

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Gaurav Yadav instead of his actual father Kumar Indradeo.

9. The learned C.J.M, Patna vide order dated 05.04.2014 had forwarded the aforesaid complaint case under section 156(3) Cr.P.C for investigation to the Kadamkuan Police Station and thereafter the present F.I.R in Kadamkuan P.S. Case 238 of 2014 was registered on 24.05.2014 against two accused persons including the present petitioner.

10. The learned counsel for the petitioner has submitted that the petitioner was serving as the Executive Officer at the Circle Office, Bankipur, Patna Municipal Corporation and under such authority and in discharge of his duties, he has passed the aforesaid order of stay. He submits that the petitioner being the Executive Officer had passed the stay order dated 27.06.2013 observing that with regard to the same property situated at Rajendra Nagar a Title Suit No.507 of 2011 is also pending and the house, in question, being in possession of Kumar Gyanendra, the revenue court had no jurisdiction to decide the title and therefore, had kept the proceeding of the case pending till the final disposal of the aforesaid Title Suit.

11. The learned counsel for the petitioner has submitted that the central allegation as against the petitioner is that he had passed the aforesaid order dated 27.06.2013 which is

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cryptic in nature staying the proceedings before him till the disposal of the Title Suit in collusion with the opponents of the complainant for extraneous considerations, however he had emphasised that the order of stay was passed by the petitioner in exercise of his *quasi judicial* authority and the same can be assailed/appealed before the superior authority in accordance with law, which in fact was done and an appeal had been preferred before the Additional Commissioner, Patna Municipal Corporation. It is the contention of learned counsel for the petitioner that merely passing an order for stay, in discharge of his official duties, could not lead to initiation of criminal proceeding on the basis of mere imputations of collusion with the beneficiaries of the mutation which was in fact carried out much prior to the petitioner even joining the post as the Executive Officer in the Circle Officer, Bankipur.

12. The learned counsel for the petitioner has vehemently argued that upon a bare perusal of the complaint petition, it would clearly manifest that the fraud was actually committed by Kumar Gyanendra and his father Kumar Indradeo with respect to the property of the principal situated at Rajendra Nagar and the present petitioner was in no way involved in any alleged fraud whatsoever. It is further emphasised that the

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mutation of the property situated at Rajendra Nagar was effected in the year 2005 itself and the consequent holding tax receipts were issued in the same year in favour of Kumar Gyanendra by the then Executive Officer one R.P Gupta and pertinently the present petitioner was not posted in the aforesaid office at the relevant time when the mutation was carried.

13. It is next submitted by the learned counsel for the petitioner that the impugned sanction order was passed without considering the legal opinion sought by the sanctioning authority. Since the impugned order for sanction was passed *de hors* the legal opinion wherein unequivocal stand had been taken that the actions of the petitioner cannot be characterized as *malafide* and that the petitioner never acted beyond his jurisdiction while passing the order of stay, it is therefore submitted by the learned counsel for the petitioner that no grounds for granting sanction against the petitioner exists in light of the section 197 Cr.P.C. which protects the public servants from vexatious prosecutions and consequently the impugned order of sanction for prosecution is bad in law and cannot be sustained.

14. In support of his submissions the learned counsel has drawn strength from the decision of the Hon’ble

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Supreme Court in the case of ***D. Devaraja vs. Owais Sabeer Hussain, (2020) 7 SCC 695, B. Saha vs. M.S. Kochar, (1979) 4 SCC 177 and Gurmeet Kaur vs. Devender Gupta, 2024 SCC OnLine SC 3761.***

15. The next limb of submission of the learned counsel for the petitioner is that the impugned order of sanction has been passed in complete violation of the provisions contained in section 2 and 3 of the Judges (Protection) Act, 1985. Adverting to the aforesaid provisions, he submits that the petitioner acting as a *quasi judicial* authority was shielded and no civil or criminal proceeding against the petitioner could have been initiated since the actions of the petitioner was clearly within the ambit of *bona fide* discharge of his official duties. The learned counsel for the petitioner has also drawn attention of this Court to section 77 of the Indian Penal Code to argue that the impugned sanction is in the teeth of the aforesaid section 77 of the IPC.

16. The learned Counsel for the petitioner has also pointed that the complainant on the strength of the POA in his favour had earlier instituted a separate complaint case bearing complaint case no. 1118 of 2012 against Kumar Gyanendra and his father Kumar Indradeo, wherein the Trial

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Court had already taken cognizance. It is emphasised by the learned counsel that in the aforesaid earlier complaint case the present petitioner was not arrayed as an accused. It was only subsequently that the complainant has instituted this complaint case against the petitioner being the Executive Officer and the co-accused being the Revenue Officer in the year 2014.

17. The learned counsel for the petitioner has lastly submitted that the present criminal proceedings appear to have been initiated only to settle a personal score among the parties who are fighting over the property at Rajendra Nagar and no *prima facie* case is made out against the petitioner. Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of ***Awdesh Sriwastava vs. State of M.P.*** reported as ***2025 SCC OnLine SC 693.***

18. Learned APP for the State has opposed this application by submitting that the petitioner being the Government Servant in connivance with other accused persons has passed the order of stay.

19. I have considered the submissions of learned counsel for the parties and perused the materials available on record particular the complaint petition.

20. The petitioner while discharging his duty as

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the Executive Officer in the Circle Office, Bankipur, Patna had passed the order dated 27.06.2013 staying the proceedings of Mutation case till the conclusion of the Title Suit No.507 of 2011 since the same parties were ventilating their dispute in the aforesaid title suit for the very same property. There is no dispute that the aforesaid order dated 27.06.2013 has been passed by the petitioner in discharge of his official duty upon remand from the appellate authority.

21. It would be profitable to refer to the decisions that have examined the question of applicability of the Judges (Protection) Act, 1985 to revenue authorities. In this regard, the High Court of Chhattisgarh in ***Rajkumar Tamboli vs. State of Chhattisgarh & Anr.*** reported as ***2024 SCC OnLine Chh 3651*** has delved deeply into the Judges (Protection) Act, 1985 and its applicability to revenue officers and held as under :-

> ***"13.*** *The Judicial Officer's Protection Act, 1850 protects Judicial Officers against being sued in any Civil Court for official acts done or orders passed by them in good faith under Section 1 of the Act of 1850, not only a Judge, Magistrate or Justice of Peace, a Collector or other person acting judicially are also protected against such civil action.*
>
> ***14.*** *In the matter of S.P. Goel v. Collector of Stamps, Delhi (1996) 1 SCC 573 the Supreme Court while considering the provisions in Section 1 of the Judicial Officers (Protection) Act, 1850 held as under:-*
>
> *"35. This section contains the common law rule of*

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immunity of Judges which is based on the principle that a person holding a judicial office should be in a position to discharge his functions with complete independence and, what is more important, without there being in his mind fear of consequences. The scope and purpose of this Act has already been explained by this Court in Anowar Hussain v. Ajay Kumar Mukherjee AIR 1965 SC 1651 in which the old decision in Teyen v. Ram Lal ILR (1890) 12 All 115 was approved. The position of Judges, Judicial Officers and Magistrates has since been made more secure by the enactment of Judges (Protection) Act, 1985."

15. *Under Section 1 of the Act of 1985, not only a Judge, Magistrate or Justice of Peace, a Collector or other person acting judicially are also protected against such civil action. The Judges (Protection) Act, 1985 goes a step ahead and provides additional protection to Judges against any civil or criminal proceeding against them for any act, thing or word committed, done or spoken by them when, or in the course of, acting or purporting to act in discharge of their official or judicial duty or function.*

16. *Section 2(a) of the Act of 1985 defines meaning of Judge as under:*

xxxxx

From the above-stated definition of "Judge", it is quite vivid that every person who is required to law to give in any proceeding a judgment is a Judge, notwithstanding he is officially designated as a Judge*.*

17. *In S.P. Goel (supra), Their Lordships have held that provisions of the Act of 1850 will also be available to Collector of Stamps as Collector has been specifically mentioned along with Judges, Magistrates and Justices of Peace in the Act of 1850.*

18. *Thus, it is well settled ever since that no action is maintainable against a Judge for anything said or done by him in exercise of a jurisdiction which vest to him. The words he speaks are protected by an absolute privileges. It was well stated by Lord Tcntcrden C.J. in Gamett v. Ferrand (1827) 6 B & C 611:*

"This freedom from action and question at the suit of an individual is given by the law to the Judges,

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not so much for their own sake as for the sake of the public, and for the advancement of justice, that being free from actions, they may be free in thought and independent in judgment, as all who are to administer justice ought to be." (Excerpts from "The Due Process of Law' by Lord Denning)."

As such, this statement of law would apply to the Judges of all rank (High or Low) as provided under the Act of 1850 and the Act of 1985.

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20. *Section 3 of the Act of 1985 provides as under:-*

*"**3. Additional protection to Judges.-**(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-sec.(2), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.*

(2) Nothing in sub-sec.(1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or the High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge."

21. *Section 4 of the Act of 1985 provides as under:-*

*"**4. Saving.-** The provision of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force providing for protection of Judges."*

From perusal of Section 4 of the Act of 1985, it is quite vivid that the provisions of the Code is in addition to and not in derogation of the provisions of any other law for the time being in force providing for protection of Judges.

22. ***Reverting to the facts of the case, it is quite vivid from definition of Section 2 of the Act of 1985 that the petitioner was empowered to give definite judgment in revenue proceeding. The petitioner at the relevant point of***

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time was empowered to pass an order of mutation of subject land in the names of purchasers (co-accused) under Sections 178 and 110 of the Code respectively and he would fall within the meaning of person under Section 2(a) of the Act of 1985 who is empowered by law to give definitive judgment in revenue proceeding.

23. The question for consideration would be, whether the petitioners are entitled for protection under Section 3 of the Act of 1985 ?

24. *In Union of India v. Upendra Singh (1994) 3 SCC 357 the Supreme Court held that even an officer, while discharging judicial or quasi-judicial duties, is amenable to the disciplinary proceedings into his conduct in discharge of the duty.*

25. The Supreme Court in the matter of Zunjarrao Bhikaji Nagarkar v. Union of India (1999) 7 SCC 409 has held that if the revenue officer in quasi-judicial adjudication has wrongly exercised his jurisdiction that wrong can be corrected in appeal. That cannot always form a basis for initiating disciplinary proceedings against an officer while he is acting as a quasi-judicial authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal.

26. *The Division Bench of this Court in the matter R.A. Khandelwal v. State of Chhattisgarh (M.Cr.C. No. 1209 of 2004), decided on 1st August, 2005 quashed criminal proceedings initiated against the petitioner therein who while acting as competent authority under the Madhya Pradesh (Ceiling on Agricultural Holdings) Act, 1960 passed certain order in that capacity was prosecuted for offences under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and Sections 120-B, 467 and 468 of the Penal Code, 1860 and held as under:-*

> *"19. Section 1 of the Judicial Officer's Protection Act, 1850, Section 3(2) of the Act, 1985, and Sections 45 and 48 of the Ceiling Act, 1960 do not provide for absolute bar from civil/criminal proceedings against a person who has performed judicial functions, except in case of good faith, done or intended to be done. The Central Govt. or the State Govt. or the Supreme Court of India or the High Court or any other Authority under any law which is competent can take action by way of civil,*

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criminal or departmental or otherwise against a person who has performed a function in exercise of his judicial/ quasi-judicial proceedings. The provisions of the Act, 1850 and the Act, 1985 and the provisions of the Ceiling Act are to prevent unnecessary harassments and frivolous prosecution of the officers for exercising his judicial/quasi judicial powers at the instance of a private party or a member of the public."

27. ***Similarly, the Madhya Pradesh High Court in the matter of Balram v. Aswani Kumar Yadav (2001) 3 MP LJ 363 has held that the petitioner therein - Naib-Tahsildar/Revenue Officer who has been given status as revenue Court while exercising the power under Code/other enactment is entitled for protection under section 3 of the Act of 1985 for an order which he passed in quasi-judicial capacity.***

28. *In the matter of Om Prakash v. Surjan Singh 2004 (1) MPJR 244 the High Court of Madhya Pradesh has held that the revenue officer/Tahsildar therein is entitled for protection for passing an order in capacity of revenue Court by provisions of Section 2 and 3 of the Act of 1985. It was also held that even if he has passed the order without jurisdiction he cannot be prosecuted by way of filing criminal complaint.*

29. *The High Court of Madhya Pradesh in the matter of State of M.P. v. Rajeev Jain (2001) 4 MPHT 58 has clearly held that prosecuting agency cannot be allowed to sit in judgments or orders passed in judicial or quasi-judicial side by a Judge. May be that he has mistaken or grossly mistaken, yet he acted judicially and for that, no action shall lie against him. The wrong, if any, could be corrected in appeal. That cannot always form a basis for initiation of criminal prosecution.*

30. *This Court in the matter of Sushil Kumar Jerom Tigga v. Ganesh Ram Gyanbandhu Patel ILR 2018 Chh 703 has held that Deputy Registrar of Co-operative Society exercising his powers under Section 64 of the Chhattisgarh Co-operative Societies Act, 1961 functions as 'Court' subordinate to High Court and therefore, protection under Section 3 of the Act of 1985 is available to him."*

(emphasis supplied)

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22. Similarly, the High Court of Madhya Pradesh in ***Meenamehra v. Lokayukt Organization & Anr.*** reported as ***2011 SCC OnLine MP 2500*** had held as under :-

> ***"9.*** *Learned Senior Counsel, while making reference to Section 2 of the JP Act, has submitted that definition of Judge, as given in Section 2 thereof, is wide enough to include revenue officers upon whom status of the Courts has been conferred by Section 31 of the MPLRC. He has further contended that each one of the petitioners, being empowered by law to give in any legal proceeding a definitive judgment, was entitled to additional protection under Section 3(1) of the JP Act. Extensive arguments addressed in support of the plea regarding the protection may be summarized as under :-*
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> > *It is no doubt correct that with the coming into force of Entry 11-A of List III it is no more the exclusive power of the State Legislature to legislate under the said Entry but "administration of justice" and "constitution and organisation of all Courts" are the subjects on which the State Legislature can legislate (See. State of T.N. v. G.N. Venkataswamy, (1994) 5 SCC 314 : AIR 1995 SC 21).*
> >
> > *The word "Courts" is used to designate those tribunals, which are set up in an organised State for the administration of justice. By administration of justice is meant the exercise of judicial power of the State to maintain and uphold "rights" and to punish "wrongs". Whenever there is an infringement of a right or an injury, the Courts are there to restore the vinculum juris, which is disturbed……By "Courts" is meant Courts of civil Judicature and by "tribunals", those bodies of men who are appointed to decide controversies arising under certain special laws (Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala, AIR 1961 SC 1669).*
> >
> > *Definition of 'Courts' under the Evidence Act is not exhaustive, (Empress v. Ashootosh Chuckerbutty, ILR (1879-80) 4 Cal 483, as approved in State of Madhya Pradesh v. Anshuman Shukla, (2008) 7 SCC 487. Further, in view of the definition of*

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'Judge' in S. 19 of Penal Code and that of 'offence' in S. 40 of the Penal Code, the petitioners as the officers deciding matter under the MPLRC are fully protected under S. 77 of the Penal Code as they had to perform judicial duties (State of Maharashtra v. Y.P. Sawant, 1977 Cri LJ 1477). ***Mutation proceedings are judicial proceedings within the meaning of CrPC (Lachhman Prasad Joshi v. Emperor, AIR 1930 Oudh 58).*** *The petitioners viz. Meena Mehra and Vivek Tripathi who were exercising judicial powers under the Code while passing the orders in question in mutation proceedings, are entitled to protection under S. 3(1) (supra) (Balram v. Aswani Kumar Yadav, (2001) 2 MPHT 330).*

Tahsildar passing any order under the MPLRC acts as 'Revenue Court' under Section 31 thereof and is, therefore, protected under Section 3 of JP Act being a Judge as defined under Section 2 thereof. Accordingly, criminal complaint against him is an abuse of the process of law and liable to be dismissed (Om Prakash v. Surjan Singh, 2004 RN 31). While passing orders under the MPLRC, Revenue Officer could be considered as a Judge as defined in Section 2 of the JP Act (S.S. Trivedi v. State of M.P., (2007) 5 MPHT 138).

10. However, the question of protection has to be examined from two different angles. Provisions of Section 3(1) not only protects Judges as defined in Section 2 from civil or criminal proceedings for any act, thing or word committed, done or spoken by him when, or in the course of, acting in the discharge of his official or judicial duty or function but also extends the protection to them for any act, thing or word committed, done or spoken by him while purporting to act in the discharge of his official or judicial duty or function.

(Emphasis supplied)

Obviously, the protection does not extend to acts purely administrative / ministerial/extra judicial/alien to the judicial duty. Any act, which is not done in the discharge of his judicial duty, is therefore, not covered by the sub-Section*."*

23. A coordinate Bench of this Court in string of

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decisions tilted as ***Kumar Arun Prakash vs. State of Bihar & Ors.*** reported as ***2024 SCC OnLine Pat 9103*** and ***Rajesh Jha 'Raja' vs. State of Bihar & Anr.*** reported as ***2024 SCC OnLine Pat 9104*** wherein, in similar facts, the respective petitions were quashed and set aside on the ground that the protection under section 3 of the Judges (Protection) Act, 1985 would apply in cases of authorities deciding mutation cases. The Coordinate Bench in ***Rajesh Jha 'Raja' (supra)*** has held as under:-

> ***"22.*** *I also find that the complaint and the subsequent impugned order against the Petitioner is not maintainable/sustainable even in the light of the Judges (Protection) Act, 1985 which provides additional protection to Judges. The definition of Judge under Section 2 of the Act of 1985 is very wide which includes quasi-judicial authority or body like Circle Officer while passing order in Mutation proceedings. Section 2 of the Judges (Protection) Act, 1985, reads as follows:—*
>
> *xxxxx*
>
> ***23.*** *Madhya Pradesh High Court in similar situations has held in the following judgments that Tehsildar/Naib Tehsildar is entitled to get the protection as provided in the Judges (Protection) Act, 1985 while exercising powers under the M.P. Land Revenue Code including the Mutation proceedings.*
>
> *(i) Mahesh Kumar Badole v. The State of M.P. Station House Officer, Misc. Criminal Case No. 41607 of 2021, order dated 10-7-2023 (MP)*
>
> *(ii) S.K. Jamra v. Rajaram in Cr. Appeal No. 2017/2016 dated 15.03.2019.*
>
> *(iii) Balram v. Ashwani Kumar Yadav, 2001 (2) MPHCT 330.*
>
> *(iv) Om Prakash v. Surjan Singh, 2004 RN 31*
>
> *(v) S.S. Trivedi v. State of M.P., 2007 SCC OnLine MP 207*
>
> ***24.*** ***<u>Section 3 of the Act of 1985 clearly provides that no civil or criminal proceeding can be entertained or continued against any judge in regard to any act allegedly</u>***

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committed while acting or purporting to Act in discharge of his official or judicial duty or function. Hence, complaint itself was not maintainable before the Ld. Magistrate. The Magistrate should not have entertained or continued the complaint proceeding, because the same is barred under Section 3 of the Judges (Protection) Act, 1985. Section 3 of the Act reads as follows:-

xxxx"

24. At this stage, it would be relevant to quote sections 2 and 3 of the Judges Protection Act, 1985 to examine the case of the petitioner, being the Executive Officer. Sections 2 and 3 of the Judges Protection Act, 1985 reads as under:-

*"**2. Definition**.- In this Act, "Judge" means not only every person who is officially designated as a Judge, but also every person—*

(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in clause (a).

***3. Additional protection to Judges**.—(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.*

(2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take

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> *such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge."*

25. From a bare perusal of the aforesaid provision, it is clear that to fall within the category of a "Judge," it is not necessary that a person be formally designated as such. Any person who is legally empowered, in the course of a legal proceeding, to render a definitive judgment would be regarded as a Judge. A careful analysis of the definition thus indicates that where a person is authorized to deliver a judgment that is final in itself, or attains finality upon confirmation by an appellate authority, such person would fall within the ambit of the term "Judge." Consequently, any individual who renders such a determinative judgment in legal proceedings would, for the purposes of the definition of this Act, would be deemed to be a Judge.

26. In the case of ***Amresh Shrivastava vs. State of Madhya Pradesh & Ors.*** reported as ***2025 SCC OnLine SC 693*** the Hon'ble Supreme Court has considered the meaning of 'wrongful order' passed by a revenue authority which would warrant a disciplinary proceeding and has held as under:-

> *"14. The facts as have been narrated above are not in dispute. Two aspects which need to be considered are:*
>
> *(1) Whether the chargesheet issued to the*

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Appellant by the Respondent-State would fall within the scope of observations that have been carved out by this Court in K.K. Dhawan case (supra)?

(2) Whether inordinate unexplained delay in issuance of the chargesheet (in this case 14 years) would in itself be a ground for quashing the chargesheet issued to the appellant?

15. *As regards the first question in K.K. Dhawan case (supra), this Court carved out the following situations where the government is not precluded from taking disciplinary actions for violation of the Code of Conduct:—*

"(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

After carving out the above exceptions, this Court proceeded to further observe that mere technical violations or the fact that an order is wrong, if not falling under the above enumerated instances, does not warrant disciplinary actions. It was further reiterated that each case depends on its facts, and absolute rules cannot be postulated. The above instances as referred and reproduced hereinabove, are thus only a guide and not meant to be

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mandatorily adhere to without exception.

16. In the present case, we are of the considered view that the charges alleged against the Appellant in the chargesheet fall under the category of a wrongful order, which does not appear to have been influenced by extraneous factors or any form of gratification. It appears that the order has been passed in good faith, without any indication of dishonesty. Furthermore, the facts outlined in the Show Cause Notice do not suggest any such impropriety. The power exercised by the Appellant in his capacity as a Tehsildar, while passing the order of Land Settlement Order, cannot be considered of a nature that would warrant disciplinary proceedings against him. The decision relied upon by the Counsel for the Appellant as mentioned above, supports this view. Consequently, the first question is answered in favor of the Appellant."

27. In the present case, the order passed by the petitioner while discharging his official duties as the Executive Officer whereby the order of stay was passed with regard to the same property which was the subject matter of the Title Suit pending before the competent civil court cannot form the sole basis for initiating criminal prosecution against the petitioner.

28. This Court has also perused the impugned order of sanction dated 28.12.2020 which is totally cryptic and non-speaking in nature and therefore, unsustainable.

29. The Hon'ble Supreme Court in the recent case of ***Robert Lalchungnunga Chongthu v. State of Bihar***, reported as ***2025 SCC OnLine SC 2511***, has considered various

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precedents on sanction for prosecution and has held as under :-

> ***"11.1.*** *In Gurmeet Kaur v. Devender Gupta (2025) 5 SCC 481 hrough B.V. Nagarathna, J., this Court observed:*
>
> > ***"25.*** *As already noted, the object and purpose of the said provision is to protect officers and officials of the State from unjustified criminal prosecution while they discharge their duties within the scope and ambit of their powers entrusted to them. A reading of Section 197CrPC would indicate that there is a bar for a court to take cognizance of such offences which are mentioned in the said provision except with the previous sanction of the appropriate Government when the allegations are made against, inter alia, a public servant.*
> >
> > *26. There is no doubt that in the instant case the appellant herein was a public servant but the question is, whether, while discharging her duty as a public servant on the relevant date, there was any excess in the discharge of the said duty which did not require the first respondent herein to take a prior sanction for prosecuting the appellant herein…"*
>
> ***11.2.*** *The factors to be borne in mind when dealing with a case involving sanction under this section has been, after consideration of number of previous pronouncements crystallised as follows in Devinder Singh v. State of Punjab (2016) 12 SCC 87 :*
>
> > *39. The principles emerging from the aforesaid decisions are summarised hereunder:*
> >
> > *39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.*
> >
> > *39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.*

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39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.

39.5. In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of court at a later stage, finding to that effect is permissible and such a plea can be taken first time before the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed.

39.7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself

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in the course of the progress of the case and it would be open to the accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.

39.9. In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial."

11.3. *A Bench of three Learned Judges in P.K. Pradhan v. State of Sikkim (2001) 6 SCC 704 held thus:*

"5. The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code:"any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty."

12. *The avowed object of sanctions being granted before cognizance is to ensure that the threat of criminal prosecution does not hang over the heads of the officials in discharge of their public duty. At the same time, it is not intended to protect officers who have transgressed the boundaries of their duty for some act/benefit which otherwise would not be termed acceptable. An aspect*

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connected with this object, is that the authority granting sanction does not do so mechanically. This is a layer of protection envisioned by this Section. In other words, when allegations are made, it is not for the authorities to grant sanction simply on the basis of the allegations but it is also that they should examine the materials placed by the investigating agency and come to a prima facie satisfaction thereon, about the officer having some or the other involvement in the alleged offence/crime. In Mansukhlal Vitthaldas Chauhan v. State of Gujarat, this Court held that the order of granting or refusing sanction must show application of mind. The relevant paragraphs thereof are extracted hereunder:

> *"**17.** Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions. (See Mohd. Iqbal Ahmed v. State of A.P. [(1979) 4 SCC 172 : 1979 SCC (Cri) 926 : AIR 1979 SC 677]) Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty.*
>
> *18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it…"*
>
> *19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to*

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> *grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."*
>
> ***Not much more needs to be said. The sanction awarded against the appellant which we have extracted in toto (supra) can in our considered view, in no way be said to be reflecting application of mind by the authorities. If sanction is based on what can at best be described as vague statements such as "on perusal of the documents and evidences mentioned in Case Diary available", this protection would be obliterated. The remainder of the sanction order touches upon the essence of Section 197 CrPC and the fact that the appellant is a public servant who would be covered thereby. The substance of why a sanction is required was however entirely missed by the sanctioning authority. The same is bad in law and must be, set aside. All consequential actions including the order taking cognizance, therefore would be quashed.***
>
> *(emphasis supplied)*

30. Now turning to the facts of the present case, from the afore-quoted discussions, it is patently clear that the petitioner would fall within the ambit of protections afforded by the Judges (Protection) Act, 1985. The protection is obviously not absolute and the State or appropriate authority could proceed against an erring officers in terms of section 3(2) of the aforesaid Act.

31. The order of stay passed by the petitioner

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which forms the basis for initiating the criminal prosecution is appealable before the appellate authority and any error committed by the petitioner therein could have been rectified by the appellate authority. From the records, it appears that an appeal was preferred agianst the order passed by the petitioner. The present petitioner by his order had stayed the mutation proceedings which was before him on remand from the appellate authority since there was a dispute over the title of the subject property. If the parties to the mutation proceedings were aggrieved by the order of stay passed by the petitioner then they could have availed remedies available under the law to assail the aforesaid order of stay. A bald statement that the order of stay passed by the petitioner being in favour of one of the parties to the mutation proceedings would not suffice to initiate a criminal prosecution against the petitioner. The criminal prosecution launched solely for passing an order of stay by the petitioner while discharging his duties, in the mutation proceedings simpliciter would squarely amount to *malafide* prosecution.

32. Further, in the present case, the sanction order is totally silent as to the circumstances under which the protection afforded to the petitioner from vexatious prosecution are required to be stripped. Moreover, the impugned sanction

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order also makes no mention of any material which would warrant initiation of criminal proceeding against the petitioner for staying the mutation case proceeding until the conclusion of the Title Suit which existed for the very same subject property. The substance of why a sanction is required to be passed for criminal proceedings was however entirely missed and skipped by the sanctioning authority, more so, when the petitioner was protected under the ambit of Judges (Protection) Act, 1985. Therefore the impugned order of sanction suffers from clear non-application of mind and can not be sustained.

33. In view of the aforesaid discussions, the impugned F.I.R *vide* Kadamkuan P.S. Case No.238 of 2024 and all consequential proceedings arising therefrom including the impugned sanction order dated 28.12.2020 are hereby quashed *qua* the present petitioner.

34. Accordingly, the present quashing petition is allowed.

(Sandeep Kumar, J)

pawan/-

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