

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.9663 OF 2021

BETWEEN:

1. SRI. KRISHNAMURTHY C.,
S/O LATE SRI. M.V.CHINNARAYAPPA
AGED ABOUT 59 YEARS,
PRESENTLY WORKING AT
KARNATAKA HOUSING BOARD
BENGALURU - 560 020.

...PETITIONER

(BY SRI. V. LAKSHMINARAYANA, SENIOR COUNSEL FOR
SMT. MAMATHA ROY, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY YELAHANKA NEW TOWN POLICE STATION
BENGALURU-560 064
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-560001.
2. J.C.KALA EDUCATIONAL AND
CHARITABLE TRUST (R)
B-1, KHB COLONY
PUTTENAHALLI YELAHANKA
BENGALURU - 560 064
REPRESENTED BY
SRI. J.N. SHAMSUNDAR

...RESPONDENTS

(BY SRI. SUHAS GOWDA M., HCGP FOR R1;
SRI. G.V.CHANDRASHEKARA, SENIOR COUNSEL FOR
SMT. APEKSHA D., ADVOCATE FOR R2)

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Location: HIGH
COURT OF
KARNATAKA

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 15.11.2018 IN C.C.NO.31011/2018 PASSED BY THE XXX ADDITIONAL CHIEF METROPOLITAN MAGISTRATE AT BENGALURU, TAKING COGNIZANCE AGAINST THE PETITIONER WHO ARRAYED AS ACCUSED NO.3, FOR THE OFFENCE PUNISHABLE UNDER SECTION 420 R/W SECTION 34 OF IPC VIDE ANNEXURE-A AND TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.31011/2018 AGAINST THE PETITIONER WHO ARRAYED AS ACCUSED NO.3, FOR THE OFFENCE PUNISHABLE UNDER SECTION 420 R/W SECTION 34 OF IPC, PENDING ON THE FILE OF XXX ADDITIONAL CHIEF METROPOLITAN MAGISTRATE AT BENGALURU VIDE ANNEXURE-A AND QUASH THE CHARGE SHEET IN C.C.NO.31011/2018 AGAINST THE PETITIONER WHO ARRAYED AS ACCUSED NO.3, FOR THE OFFENCE PUNISHABLE UNDER SECTION 420 R/W SECTION 34 OF IPC, PENDING ON THE FILE OF XXX ADDITIONAL CHIEF METROPOLITAN MAGISTRATE AT BENGALURU VIDE ANNEXURE-B.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.09.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

Heard learned Senior counsel for petitioner, learned High Court Government Pleader for respondent No.1 and learned Senior counsel for respondent No.2.

2. The prayer sought in this petition is to set aside the order dated 15.11.2018 in taking cognizance against the petitioner, who is arraigned as accused No.3 for the offence punishable under Section 420 read with Section 34 of IPC and

quash the entire proceedings in C.C.No.31011/2018, including the charge sheet.

3. The factual matrix of case of respondent No.2 is that while filing the private complaint invoked the offences under Sections 420, 468 and 471 read with Section 34 of IPC. The allegations therein in a nutshell is that, originally Karnataka Housing Board ('KHB' for short) in the year 1991 had allotted certain Civic Amenity site bearing No.14 to one Adarsh Educational and Social Service Trust® and had executed lease-cum-sale agreement in its favour. Thereafter, after securing permission from KHB to mortgage, the said Trust had mortgaged the allotted site with Shri Lakshmi Mahila Sahakara Bank Niyamitha. For having committed default in repayment of the loan, the bank brought the property for auction without any intimation and permission from KHB and having adjusted the amount towards the due, made the balance payment in favour of KHB and requested to execute the sale deed in its favour for which the KHB had communicated lack of its knowledge of the auction and also questioned the rights of the bank to auction the property. The KHB refused to acknowledge the auction sale or purchase. Thereafter, upon receipt of sale consideration along with penalty, KHB executed sale deed in favour of the

original allottee i.e., Adarsh Education and Social Service Trust® vide sale deed dated 17.02.2014. Hence, an allegation is made against this petitioner that he is responsible for executing the sale deed and alleged that he conspired with accused Nos.1 and 2 in executing the sale deed.

4. The respondent No.2 filed the private complaint and matter was referred for investigation and Crime No.274/2014 was registered for the alleged offences. The police after the investigation have submitted the charge sheet against this petitioner and other two accused persons, who have been arraigned as accused Nos.1 and 2 and invoked the offences punishable under Section 420 read with Section 34 of IPC. The petitioner relied upon copy of the charge sheet as Annexure-B, copy of the complaint as Annexure-C and copy of PCR as Annexure-D. Having filed the charge sheet, the Court took cognizance for the offence punishable under Section 420 read with Section 34 of IPC. The Trial Court took cognizance of the offences and registered criminal case against the petitioner and two others in C.C.No.31011/2018 for the offence under Section 420 read with Section 34 of IPC which is produced as Annexure-A. The petitioner is a Public Servant, who was appointed as Junior Engineer on 27.03.1992 and he is not

removable from his office without an order from State Government and his appointment is governed under KCSRs as per Annexure-E. During his tenure as a Public Servant, he has served in various branches of the KHB and had excellent record and it was only in May-June, 2012, did he take charge as Assistant Executive Engineer of Yelahanka Newtown Branch of KHB. Prior to his taking charge, his predecessor had already approved the draft sale deed vide correspondence dated 17.11.2011 and the petitioner only concluded the sale by executing it. The correspondence approving the sale deed is also produced as Annexure-F. Hence, question of implicating the petitioner in the present case when he has acted within the colour of his office is frivolous and vexatious.

5. Learned Senior counsel appearing for the petitioner would contend that the petitioner has been falsely implicated as an accused only with a malafide intention of wrecking vengeance and there is no sanction mandated under Section 197 of Cr.P.C. is obtained before initiation of criminal complaint or before taking cognizance. The counsel also brought to notice of this Court that petitioner being an officer of KHB is governed by Section 82 of Karnataka Housing Board Act, 1962 when the act was done in good faith. During investigation, the

respondent No.1 had sought for clarification, to which the Board had complied vide its correspondence dated 06.03.2018 which is produced as Annexure-H. It is abundantly clear from the said correspondence that, KHB has never acknowledged the auction done by Shri Lakshmi Mahila Sahakara Bank nor was willing to transfer the title of the concerned property to respondent No.2. In fact, KHB had upon learning about the auction had vide correspondence dated 08.03.2010, intimated the Sub-Registrar not to register any document conveying lease rights to respondent No.2 and the said correspondence is produced as Annexure-J. The counsel also vehemently contend that it is evident from the facts that Shri Lakshmi Mahila Sahakara Bank had auctioned the property without having any title over the property and without intimating or securing permission from the KHB, who were the owners of the property in question. Therefore, respondent No.2 has no rights over the property. If the respondent No.2 were to have any suspicion about the auction is ought to be against the said bank and by certain stretch of imagination against the original allottee but not against the Board let alone the petitioner, who acted within the colour of his office and in good faith executed a sale deed which was approved by his predecessor.

6. The counsel also contended that there were several writ petitions filed before this Court by warring parties, among one such writ petition is W.P.No.24159/2005 filed by original allottee against KHB. This Court vide order dated 01.03.2010 allowed the writ petition, but had reserved the liberty to the respondent-KHB to take any other action which may be available to it under the lease deed or in law. The copy of the same is produced as Annexure-K. It is also contended that respondent No.2 also filed a writ petition before this Court in W.P.No.29067/2014 seeking direction to the Board to execute a sale deed in its favour. The said writ petition is still pending for adjudication.

7. Learned Senior counsel appearing for the petitioner in his argument also reiterated that without any prior sanction and also compliance of Section 197 of Cr.P.C. as well as Section 82 of the Karnataka Housing Board Act, 1962, there cannot be any criminal prosecution against this petitioner and the Trial Court also failed to take note of the same and committed an error in taking cognizance.

8. Learned Senior counsel for the petitioner in support of his argument relied upon judgment of Apex Court in **STATE**

OF MADHYA PRADESH vs. SHEETLA SAHAI AND OTHERS reported in **(2009) 8 SCC 617**, **SUBRAMANIAN SWAMY vs. A. RAJA** reported in **(2012) 9 SCC 257**, **B.H. NARASIMHA RAO vs. GOVERNMENT OF A.P. REPRESENTED BY C.B.I.** reported in **1995 SUPP (4) SCC 704**, **STATE OF U.P. vs. SUKHBASI AND OTHERS** reported in **1985 (SUPP) SCC 79**, **MOHD. KHALID vs. STATE OF W.B.** reported in **(2002) 7 SCC 334**, **CENTRAL BUREAU OF INVESTIGATION vs. V.C. SHUKLA AND OTHERS** reported in **(1998) 3 SCC 410** and **GHCL EMPLOYEES STOCK OPTION TRUST vs. INDIA INFOLINE LIMITED** reported in **(2013) 4 SCC 505** and these judgments are in respect of conspiracy as well as abetment and while filing the charge sheet, Section 120-B of IPC and so also Section 109 of IPC is not invoked and these judgments will not come to the aid of the petitioner.

9. However, learned Senior counsel appearing for the petitioner relied upon judgment of the Apex Court in **GHCL EMPLOYEES STOCK OPTION TRUST vs. INDIA INFOLINE LIMITED** reported in **(2013) 4 SCC 505**, wherein the Apex Court discussed with regard to the complaint and the allegations made therein and an observation is made in paragraph No.13 that there is no dispute with regard to the

legal proposition that the case of breach of trust or cheating are both a civil wrong and a criminal offence, but under certain situations where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence.

10. Learned Senior counsel for the petitioner also relied upon other judgments with list of authorities dated 21.09.2026, but those citations are not relied upon during the course of argument.

11. Learned Senior counsel for the petitioner also relied upon judgment of the Apex Court in **JAMIRUDDIN ANSARI vs. CENTRAL BUREAU OF INVESTIGATION AND ANOTHER** reported in **(2009) 6 SCC 316** and brought to notice of this Court discussion made in paragraph No.63 that submission was made with regard to Section 9 of Maharashtra Control of Organised Crime Act, 1999 (MCOCA) cannot be read or invoked independent of Section 23, wherein held that Section 9(1) contemplates filing of complaints both by the investigating authorities and also by private parties and the learned Special Judge is, therefore, entitled to take cognizance of offences under MCOCA even on a private complaint, but after due compliance with Section 23(2) thereof. In view of the stringent

provisions of MCOCA, the legislature included certain safeguards for invoking the provisions thereof. The same is manifest from the provisions of Section 23 as a whole. The counsel also brought to notice of this Court discussion made in paragraph No.64, wherein also discussed the provisions of Section 9-Procedure and powers of Special Court and the expression used in Section 9(1) indicates that the Special Court may take cognizance of any offence without the accused being committed to it for trial, either on receiving a complaint of facts or upon a police report of such facts, which clearly indicates that the Special Court is also empowered to take cognizance of an offence under MCOCA even on a private complaint. The said power vested in the learned Special Judge is however, controlled, by the provisions of Section 23(2) of the Act, which provides that no Special Court shall take cognizance of any offence under the Act without the previous sanction of a police officer not below the rank of Additional Director General of Police. So also, the counsel brought to notice of this Court observation made in paragraph No.65 with regard to Section 23(2) of MCOCA that no Special Court shall take cognizance of any offence under this Act without the previous sanction of the

police officer not below the rank of Additional Director General of Police.

12. The counsel also relied upon judgment of the Apex Court in **JEEWAN KUMAR RAUT AND ANOTHER vs. CENTRAL BUREAU OF INVESTIGATION** reported in **(2009) 7 SCC 526** and brought to notice of this Court paragraph Nos.25, 26 and 27, wherein at paragraph No.25 discussed that Section 22 of Transplantation of Human Organs Act, 1994 (TOHO) prohibits taking of cognizance except on a complaint made by an appropriate authority or the person who had made a complaint earlier to it as laid down therein. The respondent, although, has all the powers of the investigating agency, it expressly has been statutorily prohibited from filing a police report. It could file a complaint petition only as an appropriate authority so as to comply with the requirements contained in Section 22 of TOHO and also discussed with regard to sub-section (2) of Section 173 of the Code. In paragraph No.26 held that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. In a situation of this nature, the respondent could carry out investigations in exercise of its authorization under Section 13(3)(iv) of TOHO. While doing so, it could exercise such

powers which are otherwise vested in it. But, as it could not file a police report but a complaint petition only; sub-section (2) of Section 167 of the Code may not be applicable. In paragraph No.27 also, an observation is made that thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions of the Code and TOHO and as soon as the area of conflict reaches, TOHO shall prevail over the Code. Ordinarily, thus, although in terms of the Code, the respondent upon completion of investigation and upon obtaining remand of the accused from time to time, was required to file a police report, it was precluded from doing so by reason of the provisions contained in Section 22 of TOHO. The counsel referring this judgment would vehemently contend that there cannot be any taking of cognizance.

13. The counsel also relied upon judgment of the Apex Court in **KANISHK SINHA AND ANOTHER vs. STATE OF WEST BENGAL AND ANOTHER** reported in **2025 SCC ONLINE SC 443**, wherein also in paragraph No.4, discussed with regard to **Priyanka Srivastava's** case, wherein direction was issued while entertaining the complaint, without the affidavit, they must be "more vigilant and diligent while exercising the power under Section 156(3) of Cr.P.C".

14. Per contra, learned Senior counsel appearing for respondent No.2 in his argument would vehemently contend that the citations which have been relied upon by learned Senior counsel appearing for the petitioner will not come to the aid of petitioner for the reason that he was dismissed from service. Once, he was dismissed from service, question of obtaining any sanction does not arise. The counsel also would vehemently contend that the act done by the petitioner is not within the purview of discharge of his official duty and in conspiracy, executed the sale deed in favour of accused Nos.1 and 2. Hence, invoked the offence against the petitioner under Section 420 read with Section 34 of IPC. The counsel would contend that Sections 80 and 82 of the Karnataka Housing Board Act, 1962 will come to the aid of the petitioner. The accused Nos.1 and 2 are the original allottees from KHB and both of them obtained sale deed in collusion with this petitioner and the property was brought for sale. When the property was mortgaged in favour of the bank and they did not repay the loan, auction was conducted. Learned counsel would contend that when the auction was conducted, remaining amount was paid to KHB and same is not disputed and during the course of

investigation also, it has emerged that the deposit of the amount is not challenged.

15. It is contended that the allegation against this petitioner is that he conspired and transferred the property in favour of accused Nos.1 and 2. Hence, specific accusation is made. The counsel also brought to notice of this Court detailed statement of objections filed regarding contentions raised by learned Senior counsel appearing for the petitioner and produced Annexure-R4. The counsel would contend that petitioner was dismissed on 10.01.2017, that too, for his misconduct and cognizance was taken after having filed the investigation report. The counsel would contend that Sections 80, 81 and 82 of the Karnataka Housing Board Act, 1962 will not come to the aid of this petitioner, since the offence invoked is under Section 420 read with Section 34 of IPC and not under the Act. It is also contended that the petitioner is an employee of the Board not the Government Servant. Hence, the very contention that sanction is necessary cannot be accepted the petitioner cannot seek protection for his illegal act.

16. Learned Senior counsel for respondent No.2 in support of his argument relied upon judgment of the Apex

Court in **BHARAT SANCHAR NIGAM LIMITED AND OTHERS vs. PRAMOD V. SAWANT AND ANOTHER** reported in **(2019) 16 SCC 63** and brought to notice of this Court paragraph No.4, wherein discussion was made that High Court erred in distinguishing **DR.LAKSHMANSINGH HIMATSINGH VAGHELA VS. NARESH KUMAR CHANDRASEKHAR JAH AND ANOTHER** reported in **(1990) 4 SCC 169**, considering that the appellants Nos.2 to 4 were removable by orders of the President of India only. The counsel would contend that the protection cannot be given to this petitioner, who is not a public servant as envisaged under Section 197 of Cr.P.C. and the protection under Section 197 of Cr.P.C. is available to employees of public sector corporation claiming the status of a 'public servant'.

17. The counsel also relied upon judgment of Apex Court in **PARKASH SINGH BADAL AND ANR. vs. STATE OF PUNJAB AND ORS.** reported in **AIR 2007 SC 1274** and brought to notice of this Court discussion made in paragraph No.16, wherein it is held that when the Public Servant, who committed an offence mentioned in the Act, while he was a Public Servant, can be prosecuted with the sanction as contemplated in Section 197 of the Act, if he continues to be a

Public Servant, when the Court takes cognizance of the offence. But, if he ceases to be a Public Servant, by that time, the Court can take cognizance of the offence without any such sanction. That correct legal position is that an accused facing prosecution for offences under the old Act or new Act cannot claim any immunity on the ground of want of sanction, if he ceases to be a public servant.

18. The counsel also relied upon judgment of the Apex Court in **C.R. BANSI vs. STATE OF MAHARASHTRA** reported in **1971 AIR 786** and brought to notice of this Court discussion made in the judgment with regard to conclusion of learned the learned Special Judge that Section 6 of the Act i.e., previous sanction necessary for prosecution and no Court shall take cognizance in respect of an employee of the Central Government without the sanction, so also in respect of State Government, in respect of (a), (b) and in respect of (c) is concerned, in the case of any other person, of the authority competent to remove him from his office, wherein also discussion was made with regard to (a), (b) and (c) and the policy underlying Section 6 and similar Sections is that there should not be unnecessary harassment of public servants. But if a person ceases to be a public servant, the question of

harassment does not arise. The fact that an appeal is pending does not make him a public servant. The appellant ceased to be a public servant when the order of dismissal was passed. There is no force in the contention of the learned counsel and the trial cannot be held to be bad for lack of sanction under Section 6 of the Act.

19. In reply to this argument of learned Senior counsel for respondent No.2, learned Senior counsel appearing for petitioner would submit that Board passed a resolution to execute the sale deed and there cannot be any complaint and even decision was taken by the Board for refund of money. The counsel also would contend that date of offence attracts and charge sheet is filed when he was in service and cognizance was also taken when he was in service. Hence, sanction is necessary.

20. In reply to this argument of learned Senior counsel appearing for the petitioner, learned Senior counsel for respondent No.2 would contend that memo along with documents filed are not the part of charge sheet and he was dismissed. Later, he was inducted cannot be a ground, since he has not co-operated during the course of investigation.

21. Having heard learned Senior counsel appearing for the petitioner and learned Senior counsel for respondent No.2, the points that would arise for consideration of this Court are:

- (i) Whether the trial Judge has committed an error in taking cognizance vide order dated 15.11.2018 for the offence punishable under Section 420 read with Section 34 of IPC?
- (ii) What order?

Point No.(i):

22. The relief sought before this Court is quashing of cognizance and no doubt, the complaint was filed before the Court and the same is numbered as PCR No.18185/2014, when the complaint was filed, several offences were invoked, but matter was referred under Section 156(3) of Cr.P.C. and the police have investigated the matter and filed the charge sheet. The Trial Court took the cognizance vide order dated 15.11.2018.

23. This Court would like to extract the order taking cognizance, which reads as hereunder:

"15.11.2018

The PI/PSI of Yelahanka New Town PS has filed this Charge sheet in Crime No.274/2014 against the accused for the offences punishable U/Sec 420 r/w 34 IPC and prays for an order to take the cognizance for the above offences against the accused.

Original FIR and complaint in Crime No.274/14 along with connected papers are herewith enclosed, and charge sheet and its connected papers are here by checked.

Accused A1 to A3 absconding

For kind Orders.

Perused there are prima-face materials to proceed against the accused persons. Hence, cognizance for the 420 r/w 34 IPC against the taken. Register the criminal case against accused in register No.III of this Court.

Issue NBW A1 to A3

Call on 29/11/2018

***Sd/-
XLIV ACMM, BANGALORE"***

24. Perused the order taking cognizance dated 15.11.2018 and there are prima facie materials to proceed against the accused persons. Hence, cognizance was taken for

the offence punishable under Section 420 read with Section 34 of IPC against the accused. Having perused the order, it is very clear that learned trial Judge perused the charge sheet and comes to the conclusion that there are prima facie materials to proceed. While taking cognizance, the offence invoked was Section 420 read with Section 34 of IPC and there is no discussion in taking cognizance and only Section 420 read with Section 34 of IPC was invoked. That means, the Court has to take note of whether there was an intention to cheat at the inception of executing the document. It is not in dispute that writ petition was filed before this Court i.e., W.P.No.24159/2005 which is filed by the original allottee against the KHB and this Court vide order dated 01.03.2010 allowed the petition, but had reserved liberty to respondent Board i.e., KHB in terms of Annexure-K.

25. It is also important to note that respondent No.2 that is complainant also filed a writ petition before this Court in W.P. No.29067/2014 seeking direction to the Board to execute the sale deed. Hence, it is very clear that the complainant/respondent has already knocked the door of this Court seeking a direction. The specific contention of the petitioner that subsequent upon the order passed by this Court

in May-June, 2012, the predecessor of this petitioner had prepared the sale deed and approved the draft sale deed vide correspondence dated 17.11.2011 and the petitioner only concluded the sale by executing the sale and relied upon the correspondence, approving the same which is produced at Annexure-F. Hence, it is clear that the predecessor of this petitioner already initiated the action subsequent to the order passed in W.P.No.24159/2005 dated 01.03.2010 and there is a force in the contention that the sale deed was executed subsequently by this petitioner.

26. It has to be noted that even if the complainant - respondent is a successful bidder and when he has knocked the door of this Court by filing a writ petition against the KHB, this Court reserved liberty to KHB to take any other action, which may be available to it under the lease deed and if he succeeds in the said writ petition, automatically the petitioner won't get any relief and there was no need to initiate the criminal prosecution. The prosecution is also for the offence under Section 420 read with Section 34 of IPC and it is settled law that while invoking Section 420 read with Section 34 of IPC, at the inception, there must be an intention to cheat. For the allegation that this petitioner colluded with accused Nos.1 and 2

and conspired with each other, there is no charge sheet and charge sheet is filed only for the offence under Section 420 read with Section 34 of IPC.

27. It is also important to note that main contention of the petitioner is that there is a protection under Section 82 of the Karnataka Housing Board Act, 1968, wherein also Section 82 of the Act is also very clear that there is a protection of action taken under this Act, no suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or purported to be done under this Act. But, the fact that he is an employee and he executed the sale deed consequent upon the decision of the Court is not in dispute and Section 80 of the Act is also only in respect of that no Court shall take cognizance of any offence punishable under the Act, except on the complaint of or upon information received from, board or some person authorized by the board. But, no decision is taken by the board as against this petitioner. But, only the subsequent purchaser in the bid invoked the criminal prosecution. It is nothing but giving of criminal colour to the civil dispute, since already writ petition was filed by the complainant/respondent before this Court and sought the direction to execute the sale deed. If any such direction is given

by this Court, in coming to the conclusion that complainant/respondent is entitled for the sale deed, consequent upon the property purchased by him, there would be a sale deed. But, cannot invoke Section 420 read with Section 34 of IPC as there was an intention to cheat the complainant.

28. It is also important to note that learned Senior counsel appearing for the petitioner would submit that, as on the date of taking cognizance, the petitioner was already in service. Learned Senior counsel appearing for respondent No.2 would submit that he was a dismissed employee and no sanction is necessary. Learned Senior counsel appearing for the petitioner relied upon the document to the effect that he was re-inducted on 21.05.2018 and to that effect, document is also produced. But, the Court has to take note that cognizance was taken on 15.11.2018. Hence, it is clear that he was on duty on the date of taking cognizance. Therefore, the very judgment relied upon by learned Senior counsel appearing for respondent No.2 in **Parkash Singh Badal's** case and **C.R. Bansi's** case will not come to the aid of learned Senior counsel appearing for respondent No.2.

29. However, the counsel relied upon judgment in ***Bharat Sanchar Nigam Limited's*** case, wherein discussion was made with regard to sanction under Section 197 of Cr.P.C. Hence, it is very clear that while taking cognizance, if the person is a public servant, denote a person falling under any of the descriptions i.e., (a) and (b) and it requires sanction.

30. So also, it has to be noted that in the judgment relied upon by learned Senior counsel for the petitioner regarding filing of private complaint is concerned, private complaint was filed in 2014. The judgment of ***Priyanka Srivastava's*** case will not come to the aid of the petitioner and judgment was passed subsequently in 2015. However, the counsel relies upon the judgment in ***Jamiruddin Ansari's*** case, wherein the Apex Court discussed in paragraph Nos.63, 64, 65 that Special Enactment gives protection and not the general statute. The judgment in ***Jeewan Kumar Raut's*** case is also very clear regarding taking cognizance is concerned that there must be sanction at the time of taking cognizance. In paragraph No.26, it is held that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. For example, in a situation of this nature,

respondent could carry out investigations in exercise of its authorization under Section 13(3)(iv) of TOHO.

31. In the case on hand, an accusation is made and charge sheet is filed only for the offence punishable under Section 420 read with Section 34 of IPC. This Court had discussed with regard to the same and the sale deed is executed on behalf of the Board and though it is contented by learned Senior counsel appearing for the respondent No.2 that offence invoked is under Section 420 read with Section 34 of IPC, the same will not come within the purview of sanction. But, it is very clear that on behalf of the Board, a sale deed is executed and Department has not taken any action and only subsequent purchaser has initiated criminal action by filing a private complaint and as on the date of taking cognizance, he was in service, since, he was re-inducted and to that effect, document is also produced and there is no sanction. The dispute between the parties is also with regard to execution of the sale deed and the complainant already approached this Court by filing a writ petition seeking for a direction and the same is subject to the result of writ petition.

32. Under the circumstances, there cannot be invoking of Section 420 read with Section 34 of IPC against this petitioner is concerned. Hence, the petitioner has made out a ground to quash the proceedings invoking Section 482 of Cr.P.C. or otherwise it amounts to abuse of process which leads to miscarriage of justice and the contention of learned Senior counsel appearing for respondent No.2 cannot be accepted. Accordingly, I answer point No.(i) as 'affirmative'.

Point No.(ii):

33. In view of the discussion made above, I pass the following:

ORDER

- (i) The criminal petition is ***allowed.***
- (ii) The order taking cognizance dated 15.11.2018 in C.C.No.31011/2018 is set aside and the proceedings initiated against the petitioner, who has been arraigned as accused No.3 in C.C.No.31011/2018 for the offence under Section 420 read with Section 34 IPC, is hereby quashed.

**Sd/-
(H.P.SANDESH)
JUDGE**

ST