



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

206

CRR-534-2009 (O&M)

Reserved on : 18.08.2026

Pronounced on : 21.08.2026

Judgment uploaded on : 21.08.2026

Whether only the operative part of the judgment is pronounced or whether the full judgment is pronounced : Full

VIKAS BHARDWAJ

.... PETITIONER

V/S

S.K.GUPTA

.... RESPONDENT

CORAM : HON'BLE MR. JUSTICE RAMESH CHANDER DIMRI

Present : Mr.B.D.Sharma, Advocate
for the petitioner.

Mr. Nitish K. Vasudeva, Advocate
for the respondent (through VC).

RAMESH CHANDER DIMRI, J. (Oral)

1. This judgment shall dispose of a revision petition filed against the judgment dated 07.11.2008 passed by the learned Additional Sessions Judge, Jalandhar, by which an order dated 31.05.2008 passed by the learned Judicial Magistrate 1st Class, Jalandhar thereby summoning the respondent in a complaint filed by the petitioner under Section 167 and 120-B of the Indian Penal Code, 1860 (for brevity, '1860 Code') was set aside.

2. Facts necessary for disposal of the present petition are that the petitioner filed a criminal complaint dated 18.12.2006 before the learned area magistrate concerned under Section 167 and 120-B of the



1860 Code. Substance of the said complaint was that the respondent, while posted as Chief Manager of State Bank of India, Industrial Area Branch, Jalandhar, had prepared a document which he knew or believed to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to the petitioner and his father. In the present case, the said document was stated to be the account statement of the firms belonging to the petitioner and his father on the basis of which, the said account was declared as a non-performing asset. As per the petitioner, the said preparation was covered by Section 167 of the said Code and therefore the respondent is liable to be prosecuted and convicted/sentenced for the said offence as well as for the offence under Section 120-B of the said Code.

3. The learned Magistrate recorded pre-summoning evidence in the said complaint and through an order dated 31.05.2008, summoned the respondent to face trial in it under the said two Sections.

4. The respondent filed a revision petition against the said summoning order. Through the impugned judgment, the said revision was allowed and the said summoning order was set aside.

5. Aggrieved of the said acceptance of the revision petition, the petitioner is before this Court in revision.

6. Learned counsel for the petitioner has argued that the impugned judgment is based on interpretation of Section 197 of the Code of Criminal Procedure, 1973 (for brevity '1973 Code'); that the Hon'ble Supreme Court in the reports *K.Ch. Prasad vs. Smt. J.Vanalatha Devi, 1987(2) SCC 52BUI and S.K.Miglani vs. State NCT of Delhi, 2019 AIR*



(SC) 2145 has already held that protection contained in the said Section is not available to an employee of a nationalized bank; and that since the impugned judgment is contrary to the above referred judgments, the impugned judgment cannot be legally sustained. He has accordingly prayed for acceptance of the revision petition.

7. On the other hand, the learned counsel for the respondent has argued that provisions contained in Section 197 of the 1973 Code were applicable to the respondent and therefore the impugned judgment has rightly quashed the summoning order passed against him. However, in support of his argument, he could not produce any judgment holding contrary to what has been held by the Hon'ble Supreme Court in the above-stated judgments.

8. After such hearing and perusal, I may state that if the impugned judgment is perused, it is based on two grounds. The first ground is that since Section 197 of the 1973 Code was applicable to the respondent, a prior sanction for prosecution was necessary under the said Section but since it was not taken, the summoning order in question could not be maintained. So far as the said ground is concerned, relevant portion of Section 197 of 1973 Code is reproduced as under :

“Section 197 in The Code of Criminal Procedure, 1973

197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his officer save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the



previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State of the State Government :

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.] [Added by Act 43 of 1991, Section 2 (w.e.f. 2-5-1991).]

[Explanation. - For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB,] [Inserted by Criminal Law (Amendment) Act, 2013] or section 509 of the Indian Penal Code.] [Inserted by Act 63 of 1980, Section 3 (w.e.f. 23.9.1980).]”

9. About applicability of the said Section to an employee of a nationalized bank, Hon’ble the Supreme Court, in **K.Ch. Prasad’s report** (**supra**) observed as under :

“6. It is very clear from this provision that this section is



attracted only in cases where the public servant is such who is not removable from his office save by or with the sanction of the Government. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the government. In this view of the matter even if it is held that appellant is a public servant still provisions of Section 197 are not attracted at all.

7. *It was contended by the learned counsel that the competent authority who can remove the appellant from service derives his power under regulations and those regulations ultimately derive their authority from the Act of Parliament and therefore it was contended that the regulations are framed with the approval of the Central Government but it does not mean that the appellant cannot be removed from his service by anyone except the Government or with the sanction of the Government. Under these circumstances on plain reading of Section 197 the view taken by the courts below could not be said to be erroneous. We therefore see no reason to entertain this appeal. It is therefore dismissed.”*

10. In **S.K.Miglani’s report (supra)** also, in respect of an employee of a nationalized bank, the Hon’ble Supreme Court observed as under :-

“The High Court in its impugned judgment has not adverted to the above aspect and has only confined to the discussion as to whether the acts alleged of the appellant were in discharge of official duty. The High Court also had relied on the judgment of this Court in Parkash Singh Badal [Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] . We, having come to the conclusion that the



appellant being not a public servant removable from his office save by or with the sanction of the Government, sanction under Section 197 Cr.P.C. was not applicable. The appellant cannot claim protection under Section 197 Cr.P.C. We are of the view that examination of further question as to whether the appellant was acting or purporting to act in the discharge of his official duty was not required to be gone into, when he did not fulfil conditions for applicability of Section 197(1) Cr.P.C..”

11. No decision, contrary to the said decisions, has been cited before me to show that Section 197 of 1973 Code was applicable to the respondent. Once it is so, the reasoning given by the learned Additional Sessions Judge for accepting the revision petition filed by respondent and for setting aside the order of summoning passed against him on the ground that protection of the said Section was available to the respondent cannot be legally sustained.

12. The impugned judgment has also been passed by the learned Additional Sessions Judge while observing in para No.5 thereof as under :

“From body and language of the compliant and preliminary evidence led on the file and taking them at their face value no offence can be said to have been committed by the accused.”

13. At the same time, a perusal of the said observations made by the learned ASJ shows that while observing so, it has not dealt with contents of the complaint filed by the petitioner at all. It has also not dealt with the documents proved by the petitioner in his pre-summoning evidence. Even the body and language of the compliant and preliminary evidence led by the petitioner have not been discussed or dealt with for the said observations. Observations of the said Para in fact are sweeping



in nature to hold that no offence can be said to have been committed by the respondent. The said general observations in the impugned judgment, therefore, are neither reasoned nor based on evidence. Acceptance of the revision petition on the basis of the said observations, therefore, can also not be sustained.

14. For what has been stated above, I am of the considered opinion that the impugned judgment dated 07.11.2008 cannot be legally sustained. It is accordingly set aside with all consequential proceedings. At the same time, since reasons given in Para no 5 of the said judgment are general in nature and have not dealt with the contents of the complaint as well as evidence led by the petitioner by specifically referring to the same, I deem it appropriate to send the matter in question back to successor Court of the learned Additional Sessions Judge, Jalandhar, for deciding the revision petition filed by the respondent against the order dated 31.05.2008 on merits and in accordance with law. It is, however, clarified that anything mentioned in the present judgment shall not affect the said decision. Parties to the *lis* in question are directed to be present in the successor Court of learned Additional Sessions Judge, Jalandhar, on 16.09.2026. The present revision is disposed of accordingly.

15. Interim application(s), if any, is/are also disposed of.

(RAMESH CHANDER DIMRI)
JUDGE

21.08.2026

anju

Whether speaking/reasoned : Yes
Whether Reportable : Yes