RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 974/2025

Rajasthan High Court
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Pramod Sharma S/o Shri Chatur Bhuj Sharma, Aged About 45 Years, Permanent Resident Of Near Tehsil Kama, District Bharatpur And Currently Residing At D-364, Malviya Nagar, Jaipur Working At Shreenath Travels, Malviya Nagar, Jaipur.

----Accused-Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Chandraprakash S/o Shri Lakshmanram, Aged About 43 Years, R/o Village Ravatsar, District Badmer, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Rajesh Maharshi
For Respondent(s) : Mr. N.S.Dhakad, P.P.

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

07/04/2025

1. This criminal miscellaneous petition has been filed by the petitioner under Section 528 of the BNSS with a prayer to quash and set aside the criminal proceedings in Criminal Case bearing CIS No. 12/2020 titled as State of Rajasthan Vs. Pramod Kumar Sharma pending before the learned Special Judge (Prevention of Corruption Cases) No.4, Jaipur arising out of an FIR No. 99/2020 registered at Police Station Pradhan Aarakshi Kendra A.C.B. Jaipur, District Jaipur for offences punishable under Section 7A of the Prevention of Corruption (Amendment) Act, 2018 (for short, "the P.C. Act of 2018") alongwith charge sheet No.127/2020 and so also the order of cognizance dated 04.09.202 (Annex.-3).

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2. Counsel appearing for the accused-petitioner submits that the accused-petitioner is not a public servant and is a businessman and he has nothing to do with the allegations made against him.

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3. Learned counsel for the petitioner also submits that the allegation against the petitioner is that he has induced one Chandraprakash, the then S.H.O. Police Station Udyog Nagar Police Station, Bharatpur for getting work done of the complainant by the then D.I.G. Police- Lakshman Gaur. Counsel for the petitioner submits that as regards the public servant, i.e., the then DIG Police, Bharatpur no involvement of him has been found in the matter and the police after completion of the investigation has filed closure report in respect of the D.I.G. Police- Lakshman Gaur before the competent Court on 09.01.2024. Counsel for the petitioner further submits that in the charge sheet submitted against the petitioner, the police has specifically stated that there is no evidence on record as regards the connection of the accused-petitioner with the then D.I.G. Police, Bharatpur or any kind of conversation in between them. Counsel also submits that in the aforesaid circumstances, the petitioner who is not a public servant, alone cannot be prosecuted for the offences punishable under Section 7A of the P.C. Act of 2018.

4. In support of his submissions, the counsel for the petitioner has relied upon the following judgments:

(i) Bharat Lal Saini Vs. State of Rajasthan: S.B. Criminal Misc. (Petition) No.8406/2022 decided by the Co-ordinate Bench of this Court on 04.08.2023.

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(ii) Babji Vs. State of Andhra Pradesh reported in 2018 (17) SCC 732 decided by Hon'ble the Apex Court on 09.08.2018.

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(iii) Vinod Kumar Vs. State of Himachal Pradesh in Criminal MMO Nos. 625 and 626 of 2023 decided by the High Court of Himachal Pradesh at Shimla on 25.06.2024.

(iv) Shivasharanappa Vs. The State in criminal appeal No.614/1997 decided by the High Court of Karnataka on 09.11.2001.

(v) Amara Kirshna Mohan Rao and Ors. Vs. the State of Andhra Pradesh in criminal petition No.901/2008 decided by the High Court of Andhra Pradesh at Hyderabad on 23.09.2011.

5. Learned Public prosecutor opposed the submissions advanced by the learned counsel appearing for the accused-petitioner and submits that the police after making a thorough investigation in the matter concluded the investigation and submitted the charge sheet against the accused-petitioner for offences punishable under Section 7A of the P.C. Act of 2018. Learned Public Prosecutor has also placed before this Court the status report of the investigation dated 04.04.2025 qua the public servant, i.e., the then D.I.G. Police, Bharatpur- Shri Lakshman Gaur and others where it has been specifically stated that after making investigation no any kind of involvement of Shri Lakshman Gaur has been found to be involved in the matter and the closure report has already been submitted by the Competent Court on 09.01.2024.

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6. Heard and considered the submissions made by the learned counsels for the parties and also perused the material available on record.

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7. The brief facts of the case are that a written complaint was submitted by the complainant-Chandraprakash on 23.06.2020 stating that he is employed as Station House Officer, Udyog Nagar Police Station Bharatpur and on 17.05.2020, the petitioner demanded Rs.10,00,000/- which was to be paid to Shri Lakshman Gaur, DIG, Bharatpur in lieu of securing complainant's promotion and to get the petitioner in good books of the D.I.G.

On the basis of the said complaint, the A.C.B. organized trap proceedings and Rs.5,00,000/- is said to have been found in the Car of the petitioner on 24.06.2024 and thereafter the F.I.R. No.99/2020 was registered on 25.06.2020. The A.C.B. after making the investigation submitted the charge sheet No.127/2020 dated 19.08.2020 against the petitioner for offences punishable under Section 7A of the P.C. Act of 2018 and the investigation qua Lakshman Gaur, DIG Police, Bharatpur was kept pending under Section 173(8) of the Cr.P.C. The police after completion of the investigation qua Lakshman Gaur, who is a public servant, has submitted the closure report on 09.01.2024 stating that no involvement of Lakshman Gaur has been found in the matter. In the aforesaid facts, the only accused in the matter against whom charge-sheet has been submitted for the offence punishable under Section 7A of the P.C. Act is the petitioner who is not a public servant.

8. The offence punishable under Section 7A of the P.C. Act of 2018 relates to an act of taking undue advantage to influence

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public servant by corrupt or illegal means or by exercising of personal influence. The provision of Section 7A of the P.C. Act of 2018 is quoted as under:

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> "7A. Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward **to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly** or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine."

9. The language of the Section 7A of the P.C. Act of 2018 clearly speaks that even a person who is not a public servant can also be made an accused for an offence punishable under Section 7A if there are allegations based on evidence of accepting or obtaining or adopting to obtain from any other person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant.

10. In order to establish the offence under Section 7A of the P.C, Act of 2018, it must be proved that (I) the accused accepted or obtain or admitted to obtain from someone; (II) for himself or for any other person; (III) any undue advantage as a

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motive or reward and; (IV) to induce a public servant; (V) by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly.

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In the present case, initially the allegation against the accused-petitioner was of demanding and accepting the money from the complainant for getting some favour from the DIG Police, Bharatpur- Lakshman Gaur. The police after completion of the investigation, has submitted closure report as regards the Lakshman Gaur, the then D.I.G. Police, Bharatpur. Now the only accused remains in this case is the present petitioner who is not a public servant.

On bare reading of the provision of Section 7A of the P.C. Act of 2018, the basic ingredient is the involvement of a public servant who can be induced by a private person after receiving some illegal reward from the complainant to get some work done.

11. Since, no public servant is involved in the present case, the provision of Section 7A of the P.C. Act of 2018 cannot be directed and thus the prosecution of the accused-petitioner alone who is not a public servant is not sustainable and the entire criminal proceedings against the petitioner is vitiated in law.

12. In the present case, initially the allegation against the petitioner was of demanding/obtaining money from the complainant for getting his work done by the public servant, i.e., D.I.G. Police, Bharatpur. The police after a thorough investigation has submitted charge sheet against the petitioner. However, the A.C.B. considering the facts that there is no involvement of Shri

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Lakshman Gaur D.I.G. Police, Bharatpur in the matter, submitted the closure report. Now the fact remains that it is the only present petitioner who has been made an accused for the offence punishable under Section 7A of the P.C. Act of 2018 who has been charge sheeted for the said offence. In the closure report dated 22.12.2023 which was submitted before the Competent Court on 09.01.2024, the A.C.B. has observed as under:

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"प्रकरण में श्री लक्ष्मण गौड़, तत्कालीन उप महानिरीक्षक पुलिस, भरतपुर रेंज भरतपुर के सरकारी आवास/निवास स्थान पर लगे लैण्डलाईन फोन में कुल 06 एक्सटेंशन थे जिनमें बैडरूम का 112, घर में बने ऑफिस का 111, ड्राईंग हाल का 115, छोटे बच्चे सिद्वार्थ के रूम का 116, बड़े बच्चे के रूम का 113 व किचन का 114 नम्बर एक्सटेंशन है। आरोपी प्रमोद शर्मा, प्राईवेट व्यक्ति दलाल ने श्री लक्ष्मण गौड के बैडरूम व आवास में बने ऑफिस से कोई कॉल नहीं किया गया जिससे श्री लक्ष्मण गौड से संलिप्तता होना प्रतीत नहीं होता है।

प्रकरण में आरोपी प्रमोद शर्मा तत्कालीन डाआईजी श्री लक्ष्मण गौड के सरकारी आवास पर रहना, उनका सरकारी फोन, सरकारी वाहन का उपयोग करना प्रमाणित पाया गया लेकिन उनकी उपस्थिति व सहमति से करने के तथ्य अनुसंधान से सामने नहीं आये हैं। आरोपी श्री लक्ष्मण गौड अपने सरकारी आवास में बने लॉन में आरोपी प्रमोद शर्मा के साथ घूमना–फिरना साथ रहना देखा जाना पाया गया लेकिन श्री लक्ष्मण गौड द्वारा अपने राजकार्य से संबंधित वार्ताए आरोपी प्रमोद शर्मा से साझा करने के कोई भी दस्तावेजी/इलेक्ट्रोनिक एवं ठोस साक्ष्य अनुसंधान से सामने नहीं आये है।

प्रकरण में थानाधिकारियों से, किये गये अनुसंधान में आये तथ्यों के संबंध में तत्कालीन पुलिस अधीक्षक धौलपुर व सवाईमाधोपुर तथा तत्कालीन रेंज प्रभारी श्री सुनील दत्त, अतिरिक्त महानिदेशक पुलिस सिविल राईट्स तत्कालीन व हाल भरतपुर रेंज प्रभावी अधिकारी एवं श्री भूपेन्द्र यादव, महानिदेशक पुलिस, राजस्थान जयपुर से अनुसंधान किया जाने पर दोनों पुलिस अधीक्षक द्वारा कोई भी लिखित

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शिकायत थानाधिकारियों से श्री प्रमोद शर्मा प्राईवेट व्यक्ति के विरूद्ध नगद राशि व सामग्री प्राप्त होने के संबंध में प्राप्त नहीं होना बताया गया एवं मौखिक रूप से जानकारी होने के तथ्यों के बारे में समय अधिक होने से जानकारी में नहीं होना बताया गया। संबंधित पुलिस अधीक्षकगणों द्वारा विजिट/मीटिंग के दौरान मौखिक रूप से अवगत कराने के तथ्यों के बारे में नहीं बताया गया।

प्रकरण में प्रकरण में दिनांक 17.09.2020 को श्री राकेश कुमार व्यास पुत्र श्री रामकिशोर शर्मा, जाति ब्राहमण उम्र 39 साल, पेशा बिजली का व्यापार, निवास प्लाट नं.797 बरकत नगर, पुलिस थाना बजाज नगर जयपुर से अनुसंधान किया जाकर विस्तृत स्पष्टीकरण/पूछताछ पृथक से मूर्तिब किया जाकर शामील पत्रावली किया गया। दिनांक 22.09. 2020 को श्री सुभाष शर्मा पुत्र श्री विष्णुचन्द्र शर्मा, जाति ब्राहम्मण, उम्र 52 साल, पेशा ट्रान्सपोर्ट, निवासी मन्दिर सालिगग्राम के पास स्टेशन रोड नई मण्डी भरतपुर से अनुसंधान किया जाकर विस्तृत स्पष्टीकरण/पूछताछ पृथक से मूर्तिब किया जाकर शामील पत्रावली किया गया। दिनांक 11.12.2023 को उक्त दोनों को तलब कर पूछताछ की जाने पर पूर्व में की गई पूछताछ की ताईद की गयी। उक्त दोनों व्यक्ति श्री लक्ष्मण गौड की रिश्तेदारी में एवं हितबद्ध गवाह होने एवं परिवादी के प्रार्थना पत्र में नाम अंकित होने से बयान 161 सीआरपीसी में लेखबद्ध नहीं किये जाकर पूर्व में स्पष्टीकरण/पूछताछ की गयी। उक्त दोनों से किये गये अनुसंधान में श्री लक्ष्मण गौड व श्री प्रमोद शर्मा से कोई भी आपसी मिलीभगत व संल्पितता सामने नहीं आयी है।

प्रकरण में श्री लखन पुत्र श्री बालमुकन्द जाति कुमावत उम्र 33 पेशा कारीगरी निवासी चांदपोलन गेट बाहर, सर्कुलर रोड भरतपुर पुलिस थाना कोतवाली जिला भरतपुर हाल मैसर्स बालमुकन्द सीमेन्ट उद्योग चांदपोल गेट बाहर जिला भरतपुर की मैसर्स बालमुकन्द सीमेन्ट उद्योग है जो चांदपोल गेट बाहर भरतपुर में स्थित है जिस पर कारीगरी गमले बनाने, सीमेन्ट की टंकी व जाली बनाने का कार्य करता है। श्री लखन से अनुसंधान किया जाने पर अपने बयान 161 सीआरपीसी में बताया कि अक्टूबर 2019 में दिनांक 21.10.2019 में 8–10 दिन पहले मेरी उक्त सीमेन्ट उद्योग पर श्री चन्द्रप्रकाश जी थानाधिकारी पुलिस थाना उद्य ोनगर आये थे जो मेरे से मिले। जिनको मैं पहले से नहीं जानता था। इन्होंने मुझे बताया कि श्री लक्ष्मण गौड

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डीआईजी साहब की कोठी पर 15 इंच व 18 इंच के 116 गमले पहुंचाने है मैं आपको उक्त गमलों का भुगतान कर दूंगा। इस पर हमने 5–7 दिन में गमले तैयार कर रंगाई पुताई कर दिनांक 21.10.2019 को डीआईजी साहब के निवास पर मैंने एक भाडे पर पिकअप गाडी कर उनके निवास स्थान पर उतारकर आया था। उसके पश्चात इसी दिन मैंने बिल नम्बर 72 दिनांक 21.10.2019 15 इंच के सीमेन्ट के गमले नग 100 दर 105 राशि 10500 रूपये व 18 इंच के सीमेन्ट के गमले 16 दर 200 राशि 3200, कलर, भाडा व मजदूरी 5000 कुल 18700 रूपये का बनाकर सीआई साहब श्री चन्द्रप्रकाश जी को दिया था जिन्होंने उसी दिनांक को मुझे 18700 रूपये का भुगतान कर दिया था।

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दिनांक 21.10.2019 को श्री लक्ष्मण गौड के सरकारी आवास पर श्री लखन कुमावत गमले लेकर गया तथा गमले स्वयं ने उतारे गये। श्री लखन द्वारा बिल श्री चन्द्रप्रकाश पुलिस निरीक्षक को दिया गया क्योंकि गमले उन्हीं के द्वारा तैयार कर भिजवाये गये जिनके द्वारा उक्त राशि का भुगतान स्वयं किया गया।

प्रकरण में तत्समय गार्ड इन्चार्ज व पहरा सन्तरी ने उक्त गमले प्राप्त होने के संबंध में अपने बयान 161 सीआइपीसी में अनुसंधान के दौरान बताया गया है। उक्त गमलों की जानकारी गार्ड इन्चार्ज व सन्तरी पहरा को थी। सन्तरी पहरा द्वारा गार्ड इन्चार्ज को गमलों के बारे में बताये जाने के तथ्य सामने नहीं आये है। गमले प्राप्त होने के समय गार्ड इन्चार्ज व सन्तरी पहरा पास में बने गार्ड रूम में मौजूद होने से जानकारी हुयी है। गार्ड प्रभारी द्वारा तत्कालीन उप महानिरीक्षक पुलिस श्री लक्ष्मण गौड को गमले प्राप्त होने के बारे में बताया जाना अनुसंधान से सामने नहीं आया है।

प्रकरण में प्रशासनिक अधिकारी अनुभाग–09, पुलिस मुख्यालय राजस्थान जयपुर के पंत्राक 1109 दिनांक 08.12.2023 से अतिरिक्त महानिदेशक पुलिस (कार्मिक) राजस्थान जयपुर से श्री चन्द्रप्रकाश पुलिस निरीक्षक की वित्तीय वर्ष 2019–20 के कार्य मूल्यांकन रिपार्ट प्राप्त हुयी जिसका अवलोकन किया जाने पर श्री चन्द्रप्रकाश पुलिस निरीक्षक द्व ारा दिनांक 22.05.2020 को एपीए/वार्षिक कार्य मूल्यांकन प्रतिवेदन भरकर तत्कालीन प्रतिवेदन अधिकारी को भिजवायी गयी।

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तत्कालीन प्रतिवेदक अधिकारी/Reporting officer श्री हवासिंह, तत्कालीन वृताधिकारी, वृत भरतपुर शहर द्वारा दिनांक 30.08.2020 को लूट, डकैती, आदि सम्पत्ति संबंधि अपराधों में विशेष महनती है कि टिप्पणी अंकित करते हुये अन्तिम अनुशंषा में उत्कृष्ट की टिप्पणी अंकित कर Reviewing officer को भिजवायी गयी। उक्त एपीए टिप्पणी की दिनांक से स्पष्ट होता है कि श्री लक्ष्मण गौड के पास उनके कार्यालय में श्री चन्द्रप्रकाश पुलिस निरीक्षक की एपीए प्राप्त नहीं हुयी थी। तत्समय परिवादी श्री चन्द्रप्रकाश का कोई कार्य श्री लक्ष्मण गौड के पास लंबित नहीं था।

समीक्षक प्राधिकारी/ Reviewing officer श्री हैदर अली जैदी, आई.पी.एस. तत्कालीन पुलिस अधीक्षक द्वारा उप अधीक्षक की टिप्पणी से सहमत होते हुये उत्कृष्ट की टिप्पणी अंकित की गयी। उक्त टिप्पणी पर दिनांक अंकित नहीं है। उक्त एपीए/वार्षिक कार्य मूल्यांकन प्रतिवेदन में स्वीकारकर्ता प्राधिकारी (Accepting officer) की कोई टिप्पणी/हस्ताक्षर अंकित नहीं है।

प्रकरण में श्री रमेश सिंह तंबर, पुलिस निरीक्षक को जारी नोटिस के संबंध में निवेदन है महानिरीक्षक पुलिस, भरतपुर रेंज भरतपुर से प्राप्त रिकॉर्ड के अनुसार श्री लक्ष्मण गौड तत्कालीन उप महानिरीक्षक पुलिस भरतपुर रेंज भरतपुर के कार्यालय आदेश क्रमांक 349 दिनांक 05.03.2020 से श्री रमेश सिंह तंवर तत्कालीन थानाधिकारी पुलिस थाना कोतवाली जिला धौलपुर को अजमानतीय वारण्टो की तामील प्रतिशत कम होने के संबंध में अन्तर्गत धारा 17 सीसीए नियम 1958 के तहत आरोप पत्र व आरोपी विवरण पत्र जारी किया गया।

श्री संजीव कुमार नार्जरी, तत्कालीन महानिरीक्षक पुलिस, भरतपुर रेंज भरतपुर के कार्यालय पत्रांक 11109 दिनांक 17.09.2020 से प्राप्त सूचना के अनुसार श्री रमेश सिंह को जारी नोटिस के संबंध में श्री महानिरीक्षक पुलिस, भरतपुर रेंज भरतपुर के कार्यालय आदेश क्रमांक 161 दिनांक 16.09.2020 से श्री लक्ष्मण गौड तत्कालीन उप महानिरीक्षक पुलिस, भरतपुर रेंज भरतपुर द्वारा श्री रमेश सिंह, पुलिस निरीक्षक को विभागीय उत्तरदायित्व में लापरवाही को सही मानते हुये परिनिन्दा के दण्ड से दण्डित किया गया है।श्री रमेश सिंह को श्री लक्ष्मण गौड द्वारा विभागीय उत्तरदायित्वों की पूर्ण पालना नहीं किये जाने से

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जारी किया गया नोटिस विधिवत रूप से उचित प्रतीत होता है। उक्त नोटिस का निस्तारण श्री लक्ष्मण गौड द्वारा नहीं किया जाकर इनके बाद में पदस्थापित महानिरीक्षक पुलिस, भरतपुर रेंज भरतपुर द्वारा किया गया है।

प्रकरण में आरोपी श्री प्रमोद शर्मा के एपल कम्पनी के मोबाईल की निदेशक राजस्थान राज्य विधि विज्ञान प्रयोगशाला जयपुर से एफएसएल रिपोर्ट मय एव फार्म के पत्रांक 7559/साईबर–204/20 दिनांक 03.09.2020 व पत्रांक 10672 दिनांक 10.09.2020 से मय शील्डशुदा मोबाईल व डीवीडी के एफएसएल रिपोर्ट प्राप्त हुयी। उक्त एफएसएल रिपोर्ट में श्री लक्ष्मण गौड तत्कालीन उप महानिरीक्षक पुलिस, भरतपुर रेंज भरतपुर व आरोपी प्रमोद शर्मा के मध्य कोई मैसेज,वाट्सएप मैसेज व रिश्वत राशि की मांग व प्राप्त किये जाने की कोई चैट व मैसेज आदान–प्रदान करना रिकवर नहीं हुये है जिससे उक्त दोनों की आपसी मिलीभगत व संलिप्तता की पुष्ठि नहीं होती है।

प्रकरण के 173(8) सीआरपीसी में लम्बित सम्पूर्ण अनुसंधान उपलब्ध साक्ष्यों, रिकॉर्ड, बयानात गवाहान, फर्दात, फर्द ट्रांसक्रिप्ट, तथ्यों एवं परिस्थितियों से पाया गया कि आरोपी श्री प्रमोद शर्मा पुत्र श्री चतुर्भुज शर्मा उर्फ सी.बी. शर्मा जाति ब्राहमण उम्र 45 साल मूल निवासी तहसील के पास कांमा, जिला भरतपुर हाल निवासी डी–364, मालवीय नगर जयपुर पेशा श्रीनाथ ट्रेवल्स मालवीय नगर जयपुर द्वारा श्री लक्ष्मण गौड तत्कालीन डआईजी भरतपुर रेंज भरतपुर के सरकारी निवास स्थान पर रहकर पुलिस की कार्यप्रणाली से अच्छी तरह जानकर सरकारी बंगले से सन्तरियों को इन्टरकॉन से फोन कर थानाधिकारियों के नाम नोट करवाकर उनसे वार्ता कर अपने स्तर से रिश्वत राशि की मांग की जाना प्रमाणित पाया गया। आरोपी प्रमोद शर्मा द्वारा श्री लक्ष्मण गौड तत्कालीन उप महानिरीक्षक पुलिस, भरतपुर रेंज भरतपुर के सरकारी आवास पर श्री लक्ष्मण गौड के पुत्रों के साथ रखकर उक्त पुत्रों के कमरे में लगे इन्टरकॉम का उपयोग अपने स्तर पर ही किया गया। श्री लक्ष्मण गौड की रिश्वत राशि मांग सत्यापन व लेन देन के समय परिवादी श्री चन्द्रप्रकाश व आरोपी प्रमोद शर्मा कोई वार्ता नहीं होना पायी गयी। ट्रेप कार्यवाही दिनांक 24.06.2023 को फर्द बरामदगी के समय भी कोई वार्ता परिवादी व आरोपी प्रमोद शर्मा से श्री लक्ष्मण गौड की नहीं होना पायी गयी। फर्द बरामदगी के दौरान आरोपी प्रमोद शर्मा द्वारा प्राप्त की

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गयी 5 लाख रूपये की रिश्वत राशि के संबंध में अपने स्पष्टीकरण में श्री लक्ष्मण गौड के लिये राशि ली जाना व उसमें कोई हिस्सा होना नहीं बताया गया। श्री लक्ष्मण गौड द्वारा परिवादी श्री चन्द्रप्रकाश से कोई रिश्वत राशि की मांग की जाना व अपने सहयोग से प्राप्त की जाना अनुसंधान से प्रमाणित नहीं पाया गया।

प्रकरण में श्री लक्ष्मण गौड, तत्कालीन उप महानिरीक्षक पुलिस, भरतपुर रेंज भरतपुर के विरूद्ध अभियोजन चलाये जाने के सारभूत व युक्तियुक्त साक्ष्य लम्बित अनुसंधान से सामने नहीं आने व आरोपी प्रमोद शर्मा से आपसी मिलीभगत व संलिप्तता अनुसंधान से सामने नहीं आने से क्लोजर रिपोर्ट स्वीकार हेतु सादर श्रीमान के समक्ष प्रस्तुत है।"

13. In view of the conclusion given in the closure report, as stated above, it is very much clear that no any public servant has been found to be involved in this criminal case. In view of the specific provision of Section 7A of the P.C. Act of 2018, no private person can be made as an accused for the offence punishable under Section 7A of the P.C. Act of 2018 without there being involvement or making a public servant as a co-accused. Hence, in the opinion of this Court only prosecuting a private person (not a public servant) without there being any other public servant a co-accused is not mandate of Section 7A of the P.C. Act of 2018 and the prosecution of such a private man alone is not sustainable.

14. In the case of Bharat Lal Saini (supra) Co-ordinate Bench of this Court in para Nos. 6 and 8 has observed as under:

"6. Thus, it is evident that to attract the mischief of Section 7 of the Act, the act of demand etc. must have connection with the discharge of public duty by the public servant. If the public servant has not been assigned

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with the public duty as claimed by the complainant, the offence under Section 7 of the Act would not be attracted. Likewise to attract the offence under Section 7A, there must be allegation of exercise of personal influence for performance/forbearance in improper and dishonest manner of public duty by some other public servant. The expression "public duty" implies that the public servant must be enjoined with the responsibility/duty to discharge in the matter alleged by the prosecutor.

8. Thus, it is an evident fact that the petitioner was not a public servant enjoined with a public duty to perform anything in the matter as is asserted in the FIR. Therefore, unless the demand, etc. has some reasonable nexus to the dishonest and improper performance of the public duty by the public servant himself or by any other public servant, the offences under Section 7 or 7A of the P.C. Act are not made out. Once the substantive offence is not made out, the allegation of conspiracy to commit that offence does not stand, therefore, this Court holds that the ingredients of offence alleged in the FIR are not made out against the petitioner. As such, the criminal prosecution of the petitioner would be an abuse of the process of law."

15. In the case of Babji (supra) the Hon'ble Apex Court in para Nos.5 and 6 has observed as under:

"5. In order to establish the offence under Section 8 of the Prevention of Corruption Act it must be proved:
(i) That the accused accepted or obtained, or agreed to accept, or attempted to obtain, from someone;
(ii) For himself or for some other person;
(iii) Any gratification whatever;
(iv) As a motive or reward for inducing by corrupt or illegal means any "public servant" to do or forbear to do any official act or to show

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favour or render any service to any of the persons specified in the section.

6. In order to constitute an offence under Section 8 of the Act, three things are essential. In the first place there must have been the solicitation or receipt of the gratification. Secondly, such gratification must have been asked for or paid as a motive or reward for inducing a public servant to do an act or do a favour or render some service as stated under Section 8 of the Act. In the present case, the evidence adduced by the prosecution is vague for whom the appellant had demanded the money and whether the person for whom the appellant demanded and received the money is a public servant. Though the receiver of the money, like in the present case may not be a public servant, the prosecution has to establish by convincing evidence that the amount must have been received for inducing a public servant for doing something by that public servant in his official capacity. So far as confirmation of the seat in the Indian Airlines, there may be persons in the middle who may be a public servant or a travel agency or others. In the absence of convincing evidence to show that the appellant had received the money from PW-4,to induce a public servant to get the confirmation of the ticket, the conviction of the appellant under Section 8 of the PC Act cannot be sustained. In the result the appeal is allowed and the appellant is acquitted."

16. In the case of Vinod Kumar (supra) the High Court of Himachal Pradesh at Shimla in para Nos.19 and 23 has observed as under:

> "19. Similarly, there is nothing on record suggesting of the fact that attempt, if any, was ever made by the petitioners to influence the public servant by corrupt of illegal means or by exercise of personal influence. It is none of the case of the Investigating Agency that petitioners being transporters, with a view to

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get the undue favour, gave bribe to co-accused Abhishek, rather precise case of the prosecution is that petitioners and co-accused in connivance with each other were doing illegal activities and in lieu of passing vehicles were demanding bribe, however, there is nothing on record to show demand, if any, made by the co-accused as well as petitioners against whom otherwise, under no circumstance, provisions of Sections 7 and 7A could be invoked.

23. In view of the above, this Court has no reason to conclude that no case much less under Sections 7 and 7A of the Act is made out against the petitioners, who are admittedly not public servants, rather transporters coupled with the fact that no complaint was ever received by investigating agency with regard to bribe, if any, demanded by the petitioners as well as co-accused Abhishek for passing of vehicles. Mere recovery of currency may not be sufficient to conclude the guilt, if any, of the petitioners under the aforesaid provisions of law, rather to bring the case within the ambit of Sections 7 and 7A of the Act, it is incumbent upon the prosecution to prove the demand, if any, made by he public servant. In the instant case, neither there is any evidence with regard to demand nor a person who complained of demand, if any, made by the petitioner as well as co-accused."

17. In the case of Amara Krishna Rao (supra) the High Court of Andhra Pradesh at Hyderabad has observed as under:

"In fact, the question of prosecuting a non-public servant for any offence covered by the P.C. Act arises if there is any possibility of ascertaining basing upon the evidence to be recorded as to whether the public servant involved in connivance with the non-public servants being the concerned Commercial Tax Officer in committing the alleged offences along with the non-public servants. It all depends upon whether the prosecution can be allowed

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> to record evidence against him with reference to the charge under the P.C. Act. 'Abatement' means an extinguishment of the very right of action itself or to cease, terminate or come to an end prematurely and consequently the right of the prosecution to prosecute a deceased accused in a criminal case is effectually wiped out. Unless the public servant is held to be guilty of the charge punishable under the P.C. Act on the basis of the evidence which can be recorded, there will not be any possibility to uphold the same charge against the non-public servants. Therefore, when in view of the abatement of the charge against the public servant the question of reopening it against him does not arise at all, the question of considering that charge against the non-public servants also does not arise at all."

18. Having considered the totality of the facts of this case and more particularly the fact that apart from the present petitioner, who is a private person, no any public servant has been found to be involved in this case and so also the view taken by the various Courts as noted above, this Court is of the opinion that the criminal proceeding initiated against the petitioner are vitiated in law and therefore, deem just and proper to exercise the inherent jurisdiction of this Court vested under Section 528 of the B.N.S.S.

19. Accordingly, this criminal miscellaneous petition is allowed. The criminal proceedings qua the petitioner pending before the Court of learned Special Judge (Prevention of Corruption cases) No.4, Jaipur in the form of Criminal Case No.12/2020 for the offence punishable under Section 7A of the P.C. Act, 2018 arising out of F.I.R. No.99/2020 registered at Police Station Pradhan Aarakshi Kendra, A.C.B. Jaipur, District Jaipur alongwith the charge sheet No.127/2020 and so also the order of cognizance dated 04.09.2020 passed by the Court of learned

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Special Judge Sessions Court Prevention of Corruption Act No.1 Jaipur (Raj.) are quashed and set aside with all consequential proceedings.

20. Stay application and pending application(s), if an, also stand disposed of.

(GANESH RAM MEENA),J

GAURAV/1

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सत्यमेव जयते

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