

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: December 10, 2013

Judgment Pronounced on: January 03, 2014

+ **CRL.M.C. No. 1506/2008**

R V AHIRWAL Petitioner

Through: Mr. Apurb Lal, Advocate

versus

K.K.SACHAN & ANR. Respondents

Through: Mr. V.P. Katiyar, Advocate for
respondent No.1

Mr. P.K.Mishra, Additional Public
Prosecutor for respondent No.2-
State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

% **J U D G M E N T**

1. Quashing of CC No.182/2001 for the offence of defamation and summoning order of 9th May, 2003 (*Annexure P-1*) is sought in this petition on merits.

2. At the hearing it was urged by learned counsel for petitioner that petitioner was a doctor working under Municipal Corporation of Delhi (*henceforth referred to as MCD*) and was Incharge of the MCD Maternity Hospital at Hudson Lane, Kingsway Camp, Delhi where respondent was working as a Pharmacist, who used to bring a school bag to hospital and petitioner had entertained suspicion that respondent-complainant was stealing medicine from Government hospital in the

school bag and so he had asked respondent-complainant not to bring school bag to Hospital but respondent-complainant had not stopped bringing school bag to hospital. As per petitioner, he had reported about it to Commissioner, MCD and when respondent-complainant came to know about it, he had started misbehaving with petitioner and used to pass casteist remarks. Petitioner had filed complaint under Sections 323/352/166/188 of IPC and under Section 3 (1) (x) of *Schedules Castes and Scheduled Tribes (Prevention of Atrocities) Act* in the year 1998 and in the said respondent-complainant herein was convicted for the offences under Sections 323/352 of IPC and was granted probation.

3. It was further urged by petitioner's counsel that instant complaint filed in September, 2001 was a counter blast to petitioner's complaint which had ended in conviction and petitioner's prosecution in this complaint is bad in law, as statutory sanction under Section 197 of Cr.P.C. has not been obtained. Lastly, it was submitted that from the complaint in question, no offence is made out and in any case, the instant complaint is barred by time and in the civil appeal, trial court's judgment granting damages for malicious prosecution of respondent-complainant has been stayed. Thus, quashing of these proceedings is sought by contending on behalf of petitioner that without statutory sanction, continuance of these proceedings is an abuse of process of Court.

4. On behalf of respondent-complainant, it was maintained that on 2nd July, 2001 respondent-complainant came to know that he is being defamed by petitioner and instant complaint has been filed in September, 2001 and is thus, within the period of limitation. To contend that period of limitation is to be computed from the date of knowledge, reliance was

placed upon *Sudershan Lohia Vs. Union of India* 2010 IV AD (Delhi) 458. It was urged by learned counsel for respondent-complainant that whether imputation of respondent-complainant stealing medicines from MCD Hospital for his private clinic were made in good faith or not, is a matter which is required to be seen at trial and not while exercising jurisdiction under Section 482 of C.P.C. To contend so, reliance was placed upon decisions in *Chaudhari Parveen Sultana Vs. State of West Bengal & Anr.* 2009 1 AD (SC) 587; *Sudershan Lohia Vs. Union of India* 2010 IV AD (Delhi) 458; *M.N. Damani Vs. S.K. Shukla* AIR 2001 SC 2037; *Iridium India Telecom Ltd. Vs. Motorola Incorporated & ors.* 2010 IX AD (SC) 265 & *Rajesh Talwar Vs. CBI* 2012 1 AD (SC) 273.

5. Regarding statutory sanction, it was urged by respondent-complainant's counsel that prior sanction under Section 197 Cr.P.C. is not required, as there is no reasonable connection between the act complained of and the discharge of official duty by petitioner. Thus, dismissal of this petition was sought by learned counsel for respondent-complainant by urging that a prima facie case for putting petitioner on trial in this complaint case is made out, as respondent -complainant has been awarded damages by civil court on account of malicious prosecution of respondent-complainant by petitioner.

6. The submissions advanced by both the sides have been duly considered and impugned complaint, summoning order, material on record and the decisions cited, have been perused and thereafter, it becomes evident that question of sanction goes to the root of the matter, which is required to be considered at the stage of taking cognizance of the offence. Petitioner is a government servant and he is entitled to

protection under Section 197 of Cr.P.C. against frivolous and vicious litigation.

7. The mandatory character of protection afforded to a public servant by virtue of Section 197 of Cr.P.C., as noticed by a three Judge Bench of the Apex Court in *State of Uttar Pradesh Vs. Paras Nath Singh* 2009 (6) SCC 372 , is as under :-

“6. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, ‘no court shall take cognizance of such offence except with the previous sanction’. Use of the words ‘no’ and ‘shall’ makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word ‘cognizance’ means ‘jurisdiction’ or ‘the exercise of jurisdiction’ or ‘power to try and determine causes’. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is

in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.”

8. Afore-noted dictum has been reiterated by Apex Court in Crl. Appeal No. 1590-1591 of 2013, *Anil Kumar & Ors. Vs. M.K. Aiyappa & Anr.*, rendered on 1st October, 2013, which needs to be highlighted. It reads as under:-

“Further, this Court in Criminal Appeal No. 257 of 2011 in the case of General Officer, Commanding v. CBI and Anr.. opined as follows:

“Thus, in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him..... If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio.”

9. The fundamental question which needs to be considered in these proceedings is whether the imputation or allegations purportedly made by petitioner accusing respondent-complainant of committing theft of medicine in a school bag carried by him from a MCD Hospital is an act which is made during the course of official duty or not. Upon a bare perusal of the complaint in question, it becomes evident that the act complained of is directly connected with his official duty. Evidently, the

offending imputation was purportedly made by petitioner during the course of his duty and for the interest of the institution and not for his personal benefit or gain. Thus, it can be unhesitatingly said that upon taking respondent's complaint as it is, the act complained of was done by petitioner during the course of official duty. Therefore, prior to the taking of cognizance of the offence in question against petitioner, prior sanction under Section 197 of Cr.P.C. is essential.

10. In the aforesaid view of this matter, this petition is allowed and impugned summoning order is quashed with liberty to respondent-complainant to obtain sanction under Section 197 of Cr.P.C. and if sanction for petitioner's prosecution is granted by the authorities concerned, then only petitioner can be prosecuted in the complaint in question.

11. This petition stands disposed of in aforesaid terms while not commenting on the merits of the case.

(SUNIL GAUR)
JUDGE

JANUARY 03, 2014

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