

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 632 OF 2009

Manoj s/o Prabhakar Lohar,
Age 35 years, Occ: Addl. Dy. Commissioner,
State Intelligence Dept. Mumbai,
R/o 122-Shravan Tarangan Complex,
Thane (W).

... APPLICANT
(ORIG. ACCUSED)

VERSUS

1) Rahemat Bee Mohd. Hasam,
Age 50 years, Occ. Business,
R/o Jam Mohalla,
Near Old Kondwad Bhusawal,
District Jalgaon.

ORIG. COMPLT.

2) The State of Maharashtra.

... RESPONDENTS

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Mr. Rajendra S. Deshmukh, Advocate for Applicant.

Mr. S. S. Patil, Advocate for Respondent No.1.

Mrs. M. A. Deshpande, APP for Respondent No.2 / State.

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CORAM : **INDIRA K. JAIN, J.**

RESERVED ON : 03rd December, 2015.

PRONOUNCED ON : 14th December, 2015.

JUDGMENT:

. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the parties.

2 Applicant is Accused No.1 in a private complaint filed by Respondent No.1/Complainant before the learned Judicial Magistrate First Class, (1st Court), Jalgaon on which learned Magistrate took cognizance, registered the case as R.C.C. No.651 of 2005 and issued summons to the Applicant / Accused. The case was registered under Sections 326, 504, 506(II) and 34 of the Indian Penal Code.

3 Here is an application under Section 482 of the Code of Criminal Procedure for quashing the proceedings in R.C.C. No.651 of 2005 pending before the learned Judicial Magistrate First Class, (1st Court), Jalgaon.

4 For the sake of convenience Applicant shall be referred as Accused No.1 and Respondent No.1 as Complainant as were referred before the Trial Court.

5 The case of Complainant in brief is as under –

- i. On 9th February, 2005 between 01:00 pm and 02:00 pm Complainant was in her brother's house. Accused No.1 Police Officer came there alongwith 15 to 20 policemen. It is alleged that Accused No.1 started assaulting Complainant with iron pipe. Complainant asked him and other policemen reason for assault. On that Complainant was unclothed and assaulted. Neighbourers assembled. In their presence Accused No.1 and other policemen again assaulted Complainant. Ameenabee sister-in-law of Complainant came to rescue her. Even Ameenabee was brutally assaulted by Accused No.1.
- ii. It is further alleged that on the instructions of Accused No.1 other police personnel caused damage to the house. Complainant was picked

up and put in police vehicle. She was taken to her house at Jam Mohalla. Then Firozabee daughter of Complainant was assaulted by Accused No.1 with an iron pipe. Roof of house of Complainant was broken by policemen who accompanied Accused No.1. Mattresses were torn. Cupboard was broken and an amount of Rs.14,000/- was taken away from said cupboard. Gold weighing about 17 Tolas which Complainant was wearing was also removed.

- iii. Thereafter Complainant, her daughter and sister-in-law were brought to Bazarpeth Police Station, Jalgaon. Complainant was taken to Civil Hospital, Jalgaon. Due to interference of Accused No.1 doctors did not give any treatment to Complainant, her daughter and sister-in-law.
- iv. A grievance is made that Complainant was confined in the custody. No information was given for what she had been arrested. On the

next day Complainant, her daughter and sister-in-law were produced before the Court. Before producing them in the Court Accused No.1 threatened the Complainant that in case she discloses about assault her entire family would be brutally assaulted. Due to fear of Accused No.1 and threats given by him, Complainant did not complain about ill-treatment and assault to learned Magistrate.

- v. In the night when Complainant was in police custody Accused No.1 assaulted on her legs by iron pipe causing fracture to her right leg.
- vi. On 13th February, 2005 when Complainant was produced before the Court she disclosed about brutal assault at the hands of Accused No.1. On 15th February, 2005 she was released on bail. She was admitted to private hospital on 16th February, 2005. Doctor opined that she sustained fracture to her leg and she was

required to be operated.

vii. According to Complainant she was under constant threats of Accused No.1. Accused No.1 threatened her to life and also to implicate her in a false case.

viii. On 9th February, 2005 itself Complainant sent a written complaint to Superintendent of Police against the Accused and copies were transmitted to various Authorities. No action was taken on her complaint which constrained her to file writ petition before this Court. The writ petition was disposed of with observations that Complainant had an efficacious alternate remedy for redressal of her grievances. Thereafter she filed a private complaint and the same is the subject matter of application on hand.

6 After presentation of complaint learned Magistrate examined the Complainant on oath under Section 200 of the Code of

Criminal Procedure. The daughter, sister-in-law and doctor were also examined. On considering the allegations in complaint and the evidence of witnesses including Complainant learned Magistrate came to the conclusion that there were *prima-facie* grounds to proceed against Accused No.1 under Sections 326 and 506(II) of the Indian Penal Code. In consequence thereof Accused No.1 was summoned by the learned Magistrate.

7 The order of issuance of process was challenged by Accused No.1 in Criminal Revision Application No.13 of 2008 before the learned Sessions Judge, Jalgaon. The same was dismissed vide order dated 14th October, 2008. Hence the instant application.

8 Heard at length Mr. Rajendra S. Deshmukh, learned counsel for Applicant, Mr. S. S. Patil, learned counsel for Respondent No.1 and Mrs. M. A. Deshpande, learned APP for Respondent No.2 / State. Perused record.

9 The main contention of Applicant is that learned Magistrate could not have taken cognizance of alleged offences and

issued process to Applicant without sanction from the State Government under Section 197 of the Code of Criminal Procedure and on the sole ground proceedings in private complaint R.C.C. No.651 of 2005 need to be quashed and set aside. Learned counsel for Applicant vehemently submitted that question whether sanction is necessary or not may arise at any stage of the proceedings and in the given case it would arise at the stage of inception itself. On merits it is submitted that the Courts below did not consider medical certificate of Respondent No.1 and other material in proper perspective and came to the incorrect conclusion that alleged acts were committed by the Accused not in the discharge of his official duty.

10 It is submitted that allegations made in complaint R.C.C. No.651 of 2005 if taken into consideration in its entirety would show that acts alleged against Applicant were during the discharge of his official duty. In this background sanction under Section 197 of the Code of Criminal Procedure is must. In the absence of sanction to prosecute the Applicant learned Magistrate ought not to have taken cognizance and should not have summoned the Applicant.

11 On the point of sanction under Section 197 of the Code of
Criminal Procedure learned counsel for Applicant placed vehement
reliance on –

- a. **Anil Kumar and others Vs. M. K. Aiyappa
and another**¹
- b. **D.T. Virupakshappa Vs. C. Subash**²

12 On the basis of above said decisions of the Honourable
Apex Court learned counsel strenuously submits that facts in the
above authorities and the present case are identical and the
provisions under Section 197 of the Code of Criminal Procedure
would squarely apply in the case against Applicant.

13 Learned counsel for Applicant further submitted that on
2nd February, 2005, Crime No.23 of 2005 was registered at Zilla Peth
Police Station, Jalgaon for the offences punishable under Sections
457 and 380 of the Indian Penal Code and it was under investigation
and supervision of Applicant who was then Sub-Divisional Police

1 (2013) 10 Supreme Court Cases 705

2 2015(5) SCALE 573

Officer, Jalgaon. Respondent No.1 was arrested in this crime on 9th February, 2005 for receiving stolen properties or proceeds thereof. According to Applicant, Respondent No.1 was also arrested in Crime No.40 of 2005 for the similar offences registered at Zilla Peth Police Station, Jalgaon. It is submitted that Respondent No.1 is a habitual offender for receiving stolen properties or proceeds thereof. She was taken in custody in Crime No.40 of 2005 and her formal arrest was shown on 13th February, 2005 as she was already in custody in Crime No.23 of 2005.

14 Another contention of Applicant is that Respondent No.1 runs a brothel house illegally. Several raids were conducted on her brothel house. The Superintendent of Police, Jalgaon called report of investigation from the Applicant. Accordingly on 28th March, 2005 Applicant submitted the report to Superintendent of Police and it was revealed during enquiry that Respondent No.1 was illegally running brothel house.

15 According to Applicant being aggrieved by the genuine and legal actions taken by Applicant against the illegal activities of

Respondent No.1, he was falsely implicated just to thwart the actions taken by Police against her. It is alleged that filing of R.C.C. No.651 of 2005 by Respondent No.1 is nothing but an abuse of process of law and in the above background the entire proceedings before the learned Magistrate be quashed and set aside.

16 In response to submissions advanced on behalf of Applicant learned counsel for Respondent No.1 would submit that private complaint was filed in view of the order passed by the Division Bench of this Court in writ petition. Learned counsel submits that after Respondent No.1 was released on bail she was admitted to private hospital and the medical certificate shows that she sustained fracture to third and fifth right metatarsion. Learned counsel for Respondent No.1 vehemently contended that Applicant had brutally assaulted Respondent No.1 and the act of assault cannot be said to be in discharge of his official duty and question of sanction under Section 197 of the Code of Criminal Procedure would not arise. Learned counsel submitted that it is not a case of police excess or dereliction in duty, but it is a case of brutal assault and therefore learned Magistrate has rightly taken cognizance and summoned the Accused

and order was correctly upheld by the Revisional Court.

17 In view of the above a simple but crucial question before this Court is whether in the given set of facts sanction under Section 197 of the Code of Criminal Procedure was necessary or not.

18 On cursory perusal of complaint R.C.C. No.651 of 2005 and the documents annexed thereto, it can be seen that Respondent No.1 was arrested in Crime No.23 of 2005 by Applicant. It is the grievance of Respondent No.1 that she was brutally assaulted by Applicant and detained in police custody. The chronological events would indicate that alleged conduct of Applicant had an essential connection with discharge of official duty.

19 Under Section 197 of the Code of Criminal Procedure, public servant is entitled to protection not only in regard to an offence alleged to have been committed by him while acting as a public servant but also in respect to the offences alleged to have been committed by him while purporting to act in discharge of his official duty. In the case of ***D.T. Virupakshappa Vs. C. Subash*** (*supra*) the

Honourable Apex Court referred the decision in **State of Orissa through Kumar Raghvendra Singh and others Vs. Ganesh Chandra Jew**¹ and held that guidelines summed-up in para 32 of the case in **Om Prakash and others Vs. State of Jharkhand through the Secretary, Department of Home, Ranchi 1 and another**² would squarely apply in case of Appellant. Paras 8 and 9 of ***D.T. Virupakshappa Vs. C. Subash*** (*supra*) read as under –

“8. The issue of ‘police excess’ during investigation and requirement of sanction for prosecution in that regard, was also the subject matter of State of Orissa through Kumar Raghvendra Singh and Ors. v. Ganesh Chandra Jew MANU/SC/0264/2004 : (2004) 8 SCC 40, wherein, at paragraph-7, it has been held as follows:

“7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for

1 (2004) 8 SCC 40

2 (2012) 12 SCC 72

anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act,

because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty....

(Emphasis supplied)

9. In *Om Prakash* (supra), this Court, after referring to various decisions, particularly pertaining to the police excess, summed-up the guidelines at paragraph-32, which reads as follows:

“32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (*K. Satwant Singh*). The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is

not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection (*Ganesh Chandra Jew*). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood.”

20 In the case on hand it is evident from factual matrix that the entire allegations made in private complaint are in respect of police excess and ill-treatment on, before and after the arrest of Respondent No.1 in connection with Crime No.23 of 2005. The alleged offensive conduct is reasonably connected with the performance of official duty of the Applicant. Therefore learned Magistrate could not have taken cognizance of the case without

previous sanction of the State Government.

21 In the above premise this Court finds substance in the contention of Applicant that prior sanction under Section 197 of the Code of Criminal Procedure was *sine-qua-non* and in the absence of sanction impugned orders would not sustain in the eye of law. On this ground alone application deserves to be allowed. Hence the following order –

ORDER

- I. Criminal Application No.632 of 2009 is allowed.
- II. Proceedings in R.C.C. No.651 of 2005 pending before the learned Judicial Magistrate First Class, (1st Court), Jalgaon in respect to taking cognizance and issuing process to Applicant are set aside.
- III. It is made clear that this Court has considered only the issue of sanction and the matter is not considered on merits. The judgment shall not

stand in the way of Respondent No.1 approaching the State Government for sanction under Section 197 of the Code of Criminal Procedure. In case such sanction is obtained and same is produced before the learned Magistrate, the Magistrate may proceed further in the case in accordance with law.

IV. Rule is made absolute in the aforesaid terms.

[INDIRA K. JAIN, J.]

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