

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-32850 of 2015
Date of Decision: 24.9.2015.**

Dr. Bhoop Singh Khatri

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Naresh Kaushik, Advocate for
Mr. K.S.Dhanora, Advocate
for the petitioner.

SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging the orders dated 22.8.2014 (Annexure P-1) and 24.8.2015 (Annexure P-4).

Learned counsel for the petitioner has submitted that sanction for prosecution of the petitioner had not been taken. Hence, the criminal proceedings against the petitioner were liable to be set aside. In support of his arguments, learned counsel has placed reliance on '**Anjani Kumar versus State of Bihar and another 2008(2) R.C.R. (Criminal) 849**', wherein it was held as under:-

Section 197(1) provides that when any person who is or was a public servant not removable from his office 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 and (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.

Learned counsel for the petitioner has next placed reliance on '**Gian Parkash versus State of Haryana 2008(3) R.C.R. (Criminal) 31**', wherein it was held as under:-

*“This Court in the case of **Ram Parkash v. State of Haryana, 2000(2) CRC(Criminal) 732** has been pleased to hold that Patwari is entitled to protection under Section 197 Criminal Procedure Code Therefore, the findings of the learned Additional Sessions Judge that protection of Section 197 Criminal Procedure Code was not available to the petitioner, as he was removable from service without even sanction of the State Government, cannot be accepted and it has to be held that the benefit of Section 197 Criminal Procedure Code was available to the petitioner as held by the learned trial Court.”*

In the present case, allegations against the petitioner are that he had prepared a false medico-legal report of Narayani Devi.

Section 197 Cr.P.C. reads as under:-

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 office 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:

¹Provided 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.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous

sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression" Central Government" occurring therein, the expression" State Government" were substituted.

(3A) Notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 , receives the assent of the President, with respect to an offence alleged to have been committed

during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Thus, as per the above provision, sanction for prosecution of a public servant is necessary if the alleged offence has been committed by him while acting or purporting to act in discharge of his official duty. The petitioner by preparing a false medical report of the injured cannot be said to have been acting in discharge of his official duty. In these circumstances, the Courts below rightly held that sanction for prosecution of the petitioner was not necessary in the facts of the present case.

The judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner as they are based on different facts.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

September 24, 2015
Gurpreet