

\$~21

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

Date of Decision: July 16, 2015

+ CRL.M.C.2586/2014 & CRL.M.A.8699/2014

SMT MOHINI SHARMAPetitioner

Through: Mr. L.S.Solanki, Advocate

versus

STATE & ANR. Respondents

Through: Ms. Nishi Jain, Additional Public
Prosecutor for respondent-State
Mr. Yogesh Chhabra, Advocate for
Respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

%

(ORAL)

In petitioner's complaint for defamation against respondent No.2, who happens to be an Assistant Sub Inspector of Delhi Police, he was summoned as an accused vide order 29th September, 2012. The summoning order of 29th September, 2012 was assailed by respondent-accused by way of a criminal revision petition, which stands allowed vide impugned order of 23rd April, 2014.

The challenge to the impugned order by learned counsel for petitioner-complainant is on the ground that a clear cut case of

defamation is made out and so no sanction is required for prosecution of respondent-accused.

At the hearing, learned counsel for petitioner had relied upon Apex Court decision in *Bhushan Kumar & Anr. v. State (NCT of Delhi) & Anr.* (2012) 5 SCC 424 to submit that summoning order needs not to be a reasoned one and on merits, trial court ought to be permitted to proceed with the case as per law.

Learned counsel for respondent No.2 supports the impugned order and submits that respondent-accused had simply recorded the statement in a criminal case and so he cannot be hauled up for the offence of defamation and since the alleged offence was committed during the course of his official duties, therefore, sanction under Section 140 of *Delhi Police Act, 1978* is mandatory.

The pivotal issue of protection under Section 197 of Cr.P.C. has been considered by Apex Court in *Anjani Kumar v. State of Bihar* 2008 5 SCC 248 in these words: -

"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 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. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty; if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act

complained of and the official duty of the public servant."

Apex Court in *Anil Kumar v. M.K.Aiyappa* (2013) 10 SCC 705 has reiterated the legal position governing the issue of sanction in these words: -

"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."

Applying the dictum of Apex Court in *Anjani Kumar* (supra) and *Anil Kumar* (supra) to the facts of the instant case, which are quite similar to that of *Omveer Singh & Anr. v. State & Ors.* 2014 SCC Online Del.714 wherein this Court had quashed the summoning order and so, trial court in the instant case has to examine the sanction aspect prior to passing of the summoning order.

Upon hearing and on perusal of summoning order, impugned order and decisions cited, I find that summoning order need not be reasoned one but the question of sanction goes to the root of the matter and so Revisional Court has rightly come to the conclusion that question of sanction ought to be considered at the summoning stage. The question of sanction was not the subject matter in *Bhushan Kumar* (supra) and so this

decision is of no avail to the case of petitioner. A coordinate bench of this Court in CrI.M.C.1449/2004 *Ravi Gulati v. Hari Parkash* decided on 16th May, 2011 has considered the question of sanction and has reiterated that the purpose of obtaining sanction is to insulate public servants against frivolous litigation. Since, it is apparent from the complaint in question that respondent-accused is a public-servant, therefore, the question of sanction needs to be considered by the trial court at the summoning stage.

Finding no palpable error in the impugned order, this petition is dismissed with direction to trial court to consider the sanction aspect and then decide as to whether respondent No.2 has to be proceeded against or not, with or without sanction under Section 140 of *Delhi Police Act, 1978*.

With aforesaid directions, this petition and application are disposed of.

(SUNIL GAUR)
JUDGE

JULY 16, 2015

vn