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

Judgment delivered on: 15th September, 2015

+ **CRL.M.C. No.3337/2011**

RAJEEV K SAKSENA

..... Petitioner

Represented by: Mr.Rajat Joseph, Adv

versus

GOVT OF NCT OF DELHI

..... Respondent

Represented by: Mr.Hirein Sharma, APP for
the State with SI Yogesh
Kumar, PS Timapur, Delhi
in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner has assailed the order on charge dated 27.09.2010 and framing of charge on 23.11.2010 in case FIR No.631/2005 registered at Police Station Timarpur, Delhi whereby learned Trial Court has framed charges under Section 167/506 of the IPC and Section 23 of the JJ Act against him.

2. On perusal of the impugned order dated 27.09.2010 passed by learned Trial Court, whereby recorded that Section 197 of the Cr PC provides that whenever public servant has to be prosecuted the sanction from the government has to be obtained but the sanction is only required for the public servant, who is not removable from his office save by or with the sanction of the government. The documents which have been filed by the petitioner to show that he cannot be removed from his office

without sanction of the government cannot be looked by the Court at the stage of charge keeping in view the judgment of the Supreme Court in ***State of Orissa vs D N Padhi***¹. Learned Trial Court also relied upon the decision of the Apex Court in ***R L Jain vs N S Rana & Ors***² wherein it is observed as under:-

“The upshot of the aforementioned discussions is that whereas an order of sanction in terms of Section 197 Cr P C is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith, but the same would not be necessary when the offence complained of has nothing to do with the same. A plea relating to want of sanction although desirably should be considered at an early stage of the proceedings, but the same would not mean that the accused cannot take the said plea or the court cannot consider the same at a later stage. Each case has to be considered on its own facts. Furthermore, there may be cases where the question as to whether the sanction was required to be obtained or not would not be possible to be determined unless some evidence is taken, and in such an event the said question may have to be considered even after the witnesses are examined.”

3. The aforesaid order dated 29.09.2010 was passed on the submission of learned APP for the State that sanction under Section 197 Cr P C is not applicable in the present as concerned public servant / petitioner was not a gazetted employee and liable to be removed from his office without sanction of the government.

4. Admittedly, the petitioner on the date of the alleged offence was posted as Superintendent, Observation Home for Boys at Timarpur, Delhi.

¹ AIR 2005 (1) 359

² (2006) SCC 294

As per the notification dated 10.06.1977, the said post is Group B gazetted post in Directorate of Social Welfare, Delhi Administration. In the said notification, Child Development Project Officer and Superintendent, falls in Group B post of the aforesaid department. Moreover, as per the memo dated 01.04.1996, the Project Officer and Child Development Project Officer/Superintendent falls in pay scale of Rs.2000-3500 (pre-revised) in the department of Social Welfare.

5. It is not in dispute that complaint against the petitioner was that there was no proper treatment to the juveniles in the observation home and accordingly, vide order dated 27.01.2005 the Juvenile Justice Board directed the police station Timarpur to register the FIR and investigate the matter. Accordingly, police registered the FIR noted above under Section 324/506/167/342 of the IPC and Section 23 of the J J Act. However, charge against the petitioner has been framed under Section 167/506 of the IPC and Section 23 of the J J Act.

6. The point to be considered here is that learned Trial Court has discarded the document of the petitioner to the effect that he is a group B gazetted officer on the ground that these documents cannot be considered at the stage of charge.

7. The settled law is that if any document or evidence in possession of the accused and benefiting him, it can be taken care of during trial only. Thus, such evidence cannot be considered as a ground for discharging the accused or quashing the FIR. But, in the present case, moot question is whether the sanction is required in case of petitioner or not for the alleged offences for which he has been charged by learned Trial Court. In the

case in hand, neither learned Trial Court has taken sanction on record nor considered the documents filed by petitioner for whether sanction is required or not.

8. There is no denial to the fact that as per Section 197 of the Cr P C, the sanction from the concerned government is required if any act or offence alleged to be committed while discharging his public duties. The allegations against the petitioner are that of ill-treatment and intimidation of the children of the observation home. Thus, alleged offence is committed while discharging his public duties. While taking cognizance, learned Trial Court ought to have considered whether any sanction from the government against the petitioner is taken or not. Moreover, the documents produced by the petitioner were not considered by learned Trial Court and ignored the same.

9. In view of above, I am of the considered opinion that the very base of the case is that in a case where the sanction is required, the sanction has to be placed before learned Trial Court prior to taking cognizance. This fact has not been considered and learned Trial Court has observed that the documents will be taken care of during trial. The very purpose of Section 197 of the Cr P C is accordingly defeated in this case.

10. Consequently, I hereby set aside the order on charge dated 27.09.2010 and consequently framing of charge dated 23.11.2010 against the petitioner. Learned Trial Court is directed to consider the documents and material available on record to ascertain and consider whether any sanction is required or not and thereafter pass the appropriate order.

11. In above terms, instant petition is allowed and disposed of.

12. The petitioner is directed to appear before learned Trial Court on date fixed i.e. 05.11.2015 for further directions. It is expected that the fresh order will be passed by learned Trial Court within an outer limit of three months from the said date of hearing.

13. The registry is directed to send the copy of this order to learned Trial Court forthwith for compliance.

Crl.M.A.No.11872/2011 (Stay)

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 15, 2015

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