

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 466 of 2017

- M. S. Thakur S/o Rambharosa Thakur, Aged About 63 Years Retired Employee/o Village Godbahal, Police Station Pithora, District Mahasamund, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through District Magistrate, Rajnandgaon, District Rajnandgaon, Chhattisgarh.
2. Sanjay Lata S/o Late Hari Prasad Lata, Aged About 32 Years R/o Ward No. 1, Ambagarh Chowki, Tahsil Ambagarh Chowki, District Rajnandgaon, Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Praveen Dhurandhar, Advocate.
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For Respondent No.1/State		Shri Anil S. Pandey, Govt. Advocate.
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For Respondent No.2	:	Shri Basant Dewangan, Advocate.
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

10/10/2017

Heard.

1. This petition under Section 482 of Cr.P.C. has been brought with a prayer to quash the order dated 1.2.2017 passed by the Additional Sessions Judge, Rajnandgaon in Criminal Revision No.71 of 2016.
2. A complaint was filed by respondent No.2 against Rajesh Lata and others in which petitioner was not arrayed as an accused. In compliance of the order of the Court, the case was investigated and charge-sheet was filed in which petitioner has been arrayed as an accused.
3. Petitioner preferred a revision on the ground that at the time of the commission of alleged offence petitioner was posted as Administrative Officer, Nagar Panchayat Ambagarh Chowki District-Rajnandgaon. By

his order the revenue record of the Nagar Panchayat were mutated, which has been alleged to be a fraudulent act by the complainant side. It is submitted that petitioner acted in his official capacity, hence, for prosecuting him sanction under Section 197 of Cr.P.C. is a *sine qua non*, but the prosecution has not obtained any such sanction under Section 197 of Cr.P.C. Reliance has been placed on the judgment of ***Devendra Singh Vs. State of Punjab***, reported in **(2016) 12 SCC 87** in which it has been held, that even if the officer concerned retires prior to filing of the charge-sheet in that case also the sanction for prosecution shall be a requirement. It is prayed that the Court of Session Judge in the impugned order has not at all considered this point, by mentioning that this point was not raised before the trial Court. It is submitted that the point raised is legal and such point can be raised at any stage either before the trial Court or the revisional Court. He prays that the case may be remanded back to the Court of Sessions Judge, Rajnandgaon for reconsidering the revision petition on the ground alleged whether there is a requirement of sanction under Section 197 of Cr.P.C. for prosecution of the petitioner.

4. Learned counsel for respondent/State and respondent No.2 submit that they have no objection if the case is remanded back for reconsideration.
5. Heard both the parties and perused the documents on record.
6. It is admitted fact, that at the relevant point of time the petitioner was holding substantive post of a public office and the order passed by him for mutating the records is an official act and although there is an allegation of *malafides*, even then sanction under Section 197 of Cr.P.C. for sanction of prosecution is necessary, particularly when the petitioner acted in his official capacity in passing the order of mutation.
7. On perusal of the impugned order, it is clear that while passing the

impugned order, the Sessions Court has not made any effort to appreciate the point raised.

8. In view of reasons as aforementioned, the petition is allowed at the motion stage and the impugned order passed by the Sessions Judge, Rajnandgaon is set aside. The matter is remanded back to the Court of Sessions Judge, Rajnandgaon with a direction to reconsider the revision petition in the light of observations made in this order.

9. The petition is, accordingly disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE