

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2017

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THE HON'BLE MR.JUSTICE M.S.RAMESH

Crl.O.P No.12960 of 2012 and M.P.No.1 of 2012

Zarina,
Sub-Inspector of Police,
Law and Order,
K-4 Annanagar Police Station,
Chennai – 600 040.

.. Petitioner

Vs

Captain J.Jayaprakash

.. Respondent

Prayer: Petition filed Under Section 482 of Cr.P.C to call for records in C.C.No.3627 of 2011 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai – 600 008 and quash the same.

For Petitioner : Mr.K.Sampathkumar
For Respondent : Mr.Thomas T Jacob

ORDER

This petition has been filed to quash the proceedings in C.C.No.3627 of 2011, on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai – 600 008.

2 Though the petitioner has raised several grounds in the present petition seeking to quash the private complaint in C.C.No.3627 of 2011. The main ground raised in this petition is that the respondent herein had not obtained prior

sanction for prosecuting the public servant. The petitioner herein, who is the Sub Inspector of Police, while acting in her official capacity as Sub Inspector of Police, had apprehended the respondent herein, which act is now complained to be a criminal act and the private complaint has been filed by the respondent herein.

3 Admittedly the petitioner herein is a public servant. The learned counsel for the petitioner submitted that the prior sanction is mandatory under Section 197(1) of Cr.P.C. and therefore in the absence of a sanction, the entire proceedings are vitiated.

4 The learned counsel for the respondent, on the other hand, submitted that though Section 197(1) Cr.P.C. provides for sanction, in the absence of such sanction, the proceedings may not set vitiated and that the want of sanction is only a ground available to the accused to be raised at a later stage i.e. during the course of the trial.

5 I have considered the rival submissions of the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials placed before the court.

6 On the same proposition, the Apex Court had observed as follows in a judgment in ***Sankaran Moitra Vs. Sadhana Das and Another reported in 2006 4 SCC 584.***

"13. In the light of the above decision it does not appear to be necessary to multiply authorities. But we may notice some of them briefly. In Pukhraj Vs. State of Rajasthan & Another (1973) 2 SCC 701, "While the law is well settled the difficulty really arises in applying the law to the fact to any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of

his public office, though in excess of the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of and act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "cloak of the office" and "professed exercise of the office" may not always be appropriate to described or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty".

In B.Saha & Ors.Vs.M.S.Kochar (1979 4 SCC 177), this Court held:

"In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him".

In Bakhshish Singh Brar Vs.Gurmej Kaur & Anr. (1987 4 SCC 663), this Court stated that is was necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, and that is the rationale behind section 196 and section 197 of the Code. But it is equally important to emphasize that rights of the citizens should be protected and no excesses should be permitted. Protection of public officers and public servants functioning in discharge of their official

duties and protection of private citizens have to be balanced in each case by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. In the recent decision in Rakesh Kumar Mishra Vs. State of Bihar & Others (2006 1 SCC 557), this Court after referring to the earlier decisions on the question stated:

"The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in the discharge of his then it must be given liberal and wide construction so far its official nature is concerned".

14. Learned counsel for the complainant argued that want of sanction under section 197 (1) of the Code did not affect the jurisdiction of the Court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate time. We are not in a position to accept this submission. Section 197 (1), its opening words and the object sought to be achieved by it, and the decisions of this Court earlier cited, clearly indicate that a prosecution hit by that provision cannot be launched without the sanction contemplated. It is a condition precedent, as it were, for a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at

the inception, but even at a subsequent stage. We cannot therefore accede to the request to postpone a decision on this question.”

7 Thus, it is seen that while initiating a private complaint against a public servant, prior sanction is a condition precedent and mandatory. It is clearly established in the above judgment that such a ground cannot be deemed to be technical, but it is the vital aspect and in the absence of such sanction, the proceedings cannot be permitted to be proceeded with.

8 At this juncture, the learned counsel for the respondent by relying on the judgments reported in ***P.Arulswami Vs. State of Madras in CDJ 1966 SC 067 and Parkash Singh Badal & Another Vs. State of Punjab & Others in CDJ 2006 SC 1100***, submitted that not in all cases prior sanction under Section 197(1) of Cr.P.C. could be mandatory and that there are exceptions. By referring to the incident, which led to the cause of action for filing the complaint, the learned counsel attempted to impress upon this court that the petitioner herein had acted in excess of her official duty and therefore, the sanction is not warranted in such cases. I am unable to agree with this submission made by the learned counsel for the respondent. It is not in dispute that the cause of action, giving rise to the complaint, had occurred when the petitioner herein was exercising her official duties. Whether she had exercised her duties in excess or in

unlawful manner, is completely a different matter. As laid down by the Hon'ble Apex Court in ***Sankaran Moitra Vs. Sadhana Das and Another reported in 2006 4 SCC 584***, an act merely because it was done negligently, does not cease to be one done or purporting to be done in execution of a duty. Scope of Section 197(1), is restricted as to whether the petitioner herein had acted in her official capacity at that point of time or not. Admittedly since the petitioner was in her duty when the incident occurred, it can only be deemed that she was exercising her official duties and therefore the prior sanction for prosecution ought to have been obtained.

9 The learned counsel for the respondent, at this juncture, submitted that he has been roped in a false case and that the incident has been exaggerated by the petitioner only for the purpose of implicating him in a criminal offence. I am of the view that, in case the respondent is aggrieved, he must be given an opportunity to ventilate his grievances. As such, by quashing the complaint on the ground that the respondent had not obtained prior sanction as mandated under Section 197 (1) Cr.P.C, it would be appropriate to give him an opportunity to apply for such sanction for filing a fresh complaint.

M.S.RAMESH, J.

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10 In the result, the proceedings in C.C.No.3627 of 2011, on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, are quashed and the criminal original petition stands allowed. However, the respondent is granted liberty to obtain necessary sanction as contemplated under Section 197 (1) Cr.P.C. to file a fresh complaint, if he choses to do so. Consequently, connected miscellaneous petition is also closed.

07.12.2017

Index:Yes

Internet : Yes/No

Speaking / Non Speaking

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To

The Chief Metropolitan Magistrate,
Egmore, Chennai – 600 008.

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