

* **HONOURABLE SRI JUSTICE T.SUNIL CHOWDARY**

+ CRIMINAL REVISION CASE No.271 of 2013

% Date: 19.1.2017

Bypu Subbarao, S/o.Dharmaraju

... Petitioner

and

\$ Dasari sudhakar Babu @ Sudhakar and
The State of Andhra Pradesh, represented by
its Public Prosecutor

... Respondents

! Counsel for the petitioner : Sri Challa Ajay Kumar

^ Counsel for the respondent No.1: Sri Pappu Nageswara Rao,
Representing Smt.T.Lakshmi Padmaja
Counsel for the respondent No.2: The Public Prosecutor
Representing the State of Andhra Pradesh

< **GIST:**

➤ **HEAD NOTE:**

? **CASES REFERRED:**

- 1) AIR 1999 SC 257
- 2) 1992 Cri.L.J. 2916(1)
- 3) (2000) 8 SCC 500
- 4) (2004) 8 SCC 40
- 5) (2012) 12 SCC 72
- 6) (2015) 12 SCC 231
- 7) 1990 (2) ALT 500 (AP)
- 8) 1999 (1) ALT (Cri) 247 (AP)
- 9) 2003 (2) ALT (Cri) 107

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARYCRIMINAL REVISION CASE No.271 of 2013**ORDER:**

This criminal revision case is filed under Sections 397 and 401 Cr.P.C., assailing the order dated 17.1.2013 in CrI.M.P. No.2715 of 2011 rejecting the prayer of the petitioner to discharge him for the offence under Section 326 IPC in C.C. No.865 of 2010 on the file of the Court of Chief Metropolitan Magistrate, Vijayawada, Krishna District.

2. The facts leading to filing of the criminal revision case are succinctly as follows: The first respondent filed complaint under Section 200 Cr.P.C., on the file of the Court of Chief Metropolitan Magistrate, Vijayawada against the petitioner for the offence punishable under Section 326 IPC. On behalf of the complainant, P.Ws.1 to 7 were examined and Exs.P1 to P8 were marked. Basing on the oral and documentary evidence available on record, the trial Court arrived at a conclusion that the material placed before it is *prima facie* sufficient to proceed against the petitioner and had taken cognizance of offence under Section 326 IPC and numbered the complaint as C.C. No.865 of 2010. The petitioner filed petition under Section 245 Cr.P.C., for discharge and the same was dismissed. Hence, the criminal revision case.

3. Sri Challa Ajay Kumar, learned counsel for the petitioner has made the following contentions: (1) the act alleged to have been committed by the petitioner falls within the purview of discharge of his official duty, which fact was not considered by the trial court in proper perspective; (2) the trial court committed grave error by

taking cognizance of offence under Section 326 IPC without prior sanction for prosecuting the petitioner; and (3) the trial court ought to have discharged the petitioner on the ground of abnormal delay in lodging the complaint; therefore, the impugned order is not sustainable either on facts or in law. ***Per contra***, Sri Pappu Nageswara Rao, learned counsel representing Smt.T.Lakshmi Padmaja, learned counsel for the first respondent has made the following submissions: (1) the observation made by the trial Court that the act committed by the petitioner falls outside the purview of discharge of his official duty is sustainable on facts; (2) the sanction can be obtained at any stage of the trial; and (3) mere delay in filing the complaint by itself is not a valid ground to discharge the petitioner.

4. The crucial question that falls for consideration is whether the alleged act committed by the petitioner falls outside the purview of discharge of his official duty or not. On the night of 21.5.1991, Sri Rajiv Gandhi, former Prime Minister of India was assassinated during the election campaign in the State of Tamil Nadu. The said news spread like a whirlwind all over the country. Taking it as an advantage, miscreants, anti-social elements and perpetrators of crimes came into the streets destroyed the public properties and looted the private properties. In order to bring back normalcy in and around Vijayawada, curfew was declared by the Authorities. Despite imposition of curfew, the Police personnel have made every attempt, for a few days round the clock, to restore peace and normality in the public life.

5. It is the case of the first respondent that on the night of 21.5.1991 i.e., after 1.30 A.M., on 22.5.1991, when he was returning from his nephew's house, the petitioner, the then Sub-Inspector of Police, Krishnalanka Police Station, fired on him, without giving any caution, which resulted in a grievous bullet injury on his back. The act committed by the petitioner falls within the ambit of Section 326 IPC. The first respondent filed counter in CrI.M.P. No.2715 of 2011 wherein he categorically admitted that curfew was in force at the time of the alleged incident.

6. The incident said to have taken place at Krishnalanka area of Vijayawada town. Even as per the averments made in the complaint filed by the first respondent, prior to the alleged incident miscreants caused damage to one RTC bus and other public properties in Krishnalanka area where the house of the first respondent was situated. Even if the allegations made in the complaint and the counter filed by the first respondent are taken into consideration, law and order situation in Krishnalanka area was completely out of control. As observed earlier, the news of assassination of Sri Rajiv Gandhi created unrest throughout the country. Curfew was imposed in several areas that include Krishnalanka warning the public not to come out of the houses. In such a ghastly situation, it is the bounden duty of the Police to take all possible measures to regulate the law and order situation. It is not the case of the first respondent that the Police were not authorized to open fire in order to disperse the mob. It is also not the case of the first respondent that there was enmity between him

and the petitioner prior to the alleged incident. By the time of the alleged incident, the petitioner was working as Police Officer, the curfew was in force and the alleged injury was caused to the petitioner.

7. The State Government appointed Justice Ansari as one-man Commission to inquire into the incidents occurred in the State of Andhra Pradesh in consequence of the assassination of Sri Rajiv Gandhi, and to submit a report. In the Commission's report, it is mentioned that, *"the Commissioner after elaborate enquiry, found that the complainant herein could not establish that he was fired by the accused Officer, while the complainant was at his residence."* The witnesses examined on behalf of the first respondent, during the course of enquiry under Section 200 Cr.P.C., gave different versions with regard to the presence of the petitioner nearby his house at the time of the alleged incident. It is an admitted fact that the first respondent faced trial in C.C. No.460 of 1996 on the file of the Court of IV Metropolitan Magistrate-cum-Mahila Court, Vijayawada for the offences punishable under Sections 3 *Mischief causing damage to public property*, and 4 *Mischief causing damage to public property by fire or explosive substance* of Prevention of Damage to Public Properties Act, 1984 and Sections 148 and 427 IPC in connection with the riots occurred during the curfew period.

8. In order to substantiate the stand of the first respondent that the petitioner exceeded his limits while discharging the alleged official duties, learned counsel for the first respondent has drawn the attention of this court to the following decisions:

In **Bakhshish Singh Brar v Smt.Gurmej Kaur**¹, the Hon'ble

apex Court held at Para 6 as follows:

6. In the instant case, it is alleged that grievous injuries were inflicted upon the complainant and as a result of injuries one of the alleged accused had died. The question is while investigating and performing his duties as a police officer was it necessary for the petitioner to conduct himself in such a manner which would result in such consequences. It is necessary to protect the public servant in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution that is the rationale behind section 196 and section 197 of the Cr. P.C. But it is equally important to emphasize that rights of the citizens should be protected and no excesses should be permitted. "Encounter death" has become too common. In the facts and circumstance of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced 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. It is true that section 196 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasized that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence.

In **Punjab National Bank v Surendra Prasad Sinha**², the

Hon'ble apex Court held at Para 5 as follows:

5. It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance.

9. In order to appreciate the rival contentions, it is apt to refer the following decisions:

In **Abdul Wahab Ansari v State of Bihar**³, the Hon'ble apex

Court held at paragraph 9 as follows:

¹ AIR 1999 SC 257

² 1992 Cri.L.J. 2916(1)

³ (2000) 8 SCC 500

9. ... It is not necessary for us to multiply authorities on this point and bearing in mind the ratio of the aforesaid cases and applying the same to the facts of the present case as indicated in the complaint itself, we have no hesitation to come to the conclusion that the appellant had been directed by the Sub-Divisional Magistrate to be present with police force and remove the encroachment in question and in course of discharge of his duty to control the mob, when he had directed for opening of fire, it must be held that the order of opening of fire was in exercise of the power conferred upon him and the duty imposed upon him under the orders of the Magistrate and in that view of the matter the provisions of Section 197(1) applies to the facts of the present case. Admittedly, there being no sanction, the cognizance taken by the Magistrate is bad in law and unless the same is quashed qua the appellant, it will be an abuse of the process of Court. Accordingly, we allow this appeal and quash the criminal proceeding, so far as the appellant is concerned.

In **State of Orissa v Ganesh Chandra Jew**⁴, the Hon'ble apex

Court held at Paras 7 and 10 as follows:

7. 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.

10. Such being the nature of the provision the question is, how should the expression, "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", be understood? What does it mean? "Official", according to the dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In *B. Saha v. M.S. Kochar*, (1979) 4 SCC 177, it was held: (SCC pp. 184-85, para 17)

⁴ (2004) 8 SCC 40

“17. The words ‘any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty’ employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, ‘it is no part of an official duty to commit an offence, and never can be’. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, *directly and reasonably* connected with his official duty will require sanction for prosecution under the said provision.”

(emphasis in original)

Use of the expression “official duty” implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

In **Om Prakash v State of Jharkhand**⁵, the Hon’ble apex Court held at Para 32 as follows:

32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (*K. Satwant Singh v State of Punjab*, AIR 1960 SC 266). *The protection given under Section 197 of the Code 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 (Ganesh Chandra Jew).* If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood.

The Hon’ble apex Court while reaffirming the principle enunciated in the above cases made the following observations in

D.T. Virupakshappa v C.Subash⁶ at Para 9, which read as follows:

⁵ (2012) 12 SCC 72

9. In our view, the above guidelines squarely apply in the case of the appellant herein. Going by the factual matrix, it is evident that the whole allegation is on police excess in connection with the investigation of a criminal case. The said offensive conduct is reasonably connected with the performance of the official duty of the appellant. Therefore, the learned Magistrate could not have taken cognizance of the case without the previous sanction of the State Government. The High Court missed this crucial point in the impugned order.

10. Even as per the case of the first respondent, the petitioner opened fire as per the instructions of the superior officers in order to disperse the mob, who are causing damage to the public and private properties. The first respondent failed to assign reasons much less cogent and valid reasons why he was on streets despite curfew. The petitioner opened the fire while discharging his duties as a Police officer. The alleged act done by the petitioner is reasonably connected with the discharge of his official duty and would not merely a clock for doing an objectionable act. In the decision 1st cited supra, the Police officer exceeded their limits while discharging official duties; therefore, they are not entitled for protection under Section 197 Cr.P.C. The facts of the case on hand are entirely different to the facts 1st cited supra.

11. The next question that falls for consideration is whether taking of cognizance of offence by the trial Court is vitiated in the absence of the prior sanction. The petitioner, at the relevant point of time, was working as a Police Officer. Thus the petitioner is a public servant as defined under Section 21 IPC. Obtaining of previous sanction is *sine qua non* to take cognizance of offence against public servant, with regard to the acts committed by him while discharging his official duties, in view of Section 197 Cr.P.C. The very object of Section 197 Cr.P.C., is to protect the public

servants from frivolous, vexatious and malicious prosecutions in connection with the acts committed by him while discharging his duties as public servant.

12. The contention of the learned counsel for the first respondent is that the sanction can be obtained at any stage of the proceedings. He emphasized that merely because sanction was not obtained to prosecute the petitioner by itself is not a valid ground to discharge him. In order to resolve the issue, this court is placing reliance on the following judgments:

In **K.V.Ramana Reddy v A.Radha**⁷, this Court held at Para 29 as follows:

29. Before parting with this matter, it needs to be pointed out that all the respondent-accused in this case are not public servants removable by or with the sanction of the Government so as to attract Section 197 Cr.P.C., as such. However by virtue of the powers conferred by sub-section (3) of Section 197 Cr.P.C., the Government of Andhra Pradesh has through G.O.Ms. No.406, Home (Courts-B), dated 30.4.1974 has extended the application of Section 197 to all the Police Officers including Sub-Inspectors, Head Constables and Constables by virtue of the powers conferred by Sub-section (3) of Section 197 of Code of Criminal Procedure. Thus in view of this G.O. applicability of Section 197 of the Code of Criminal Procedure is beyond the theme of controversy, of course subject to the condition that the acts complained of is satisfied, required or otherwise.

The same principle was reiterated in **Pisupati Venkata Ramanaiah v. Shaik Khasim Peera, Sub-Inspector of Police**⁸.

In **S.A.Azeez v Pasam Hari Babu**⁹, this Court held at Para 5 as follows:

5. There is no dispute that when a public servant is to be prosecuted in respect of the official acts of such public servant, sanction to prosecute him is necessary. The object of Section 197, Cr.P.C. is to protect public servants against irresponsible, frivolous or vexatious proceedings for acts done in discharge of official duty, and to see that no prosecution is started unless there is some foundation for the charge brought. The immunity from prosecution without sanction extends only to acts which can be shown to be done in discharge of official duty or to purport to

⁷ 1990 (2) ALT 500 (AP)

⁸ 1999 (1) ALT (Cri) 247 (AP)

⁹ 2003 (2) ALT (Cri) 107

be done in such discharge, but an offence arising out of abuse of official position by an act not purporting to be official does not require any sanction.

In **Om Prakash**, the Hon'ble apex Court held at Para 41, as follows:

41. The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the Code. It is not possible for us to hold that in such a case, the court cannot look into any documents produced by the accused or the public servant concerned at the inception. The nature of the complaint may have to be kept in mind. **It must be remembered that previous sanction is a precondition for taking cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea.**

(emphasis supplied)

As per the principle enunciated in the cases cited supra, taking cognizance of offence without previous sanction as required under Section 197 Cr.P.C., is not legally sustainable. When taking of cognizance of offence itself is unsustainable, forcing the accused to face the rigour of criminal trial is only a futile exercise.

13. It is not in dispute that the incident had taken place on the night of 21.5.1991. The complaint was filed on 21.12.2006 for the offence under Section 326 IPC i.e., fifteen years after the incident. However, as rightly submitted by the learned counsel for the first respondent, there is no period of limitation to lodge a complaint in respect of an offence punishable with more than three years, in view of Section 468 Cr.P.C. It is not in dispute that the sentence prescribed for the offence under Section 326 IPC is more than three years. The question that falls for consideration is whether the complainant can be permitted to set criminal law into motion,

after such a long lapse of time, without assigning justifiable reasons.

14. It is an admitted fact that the first respondent filed W.P. No.8794 of 1993 before this Court seeking compensation from the Government as well as the petitioner herein. This Court, by order dated 06.12.1996, dismissed the writ petition, however, directed the official respondents therein to consider the case of the first respondent herein for rehabilitation by providing a job suitable to his condition or allotting a fair price shop dealership, gas agency dealership or other self-employment in the locality where he is residing. As observed earlier, the first respondent faced the trial in C.C. No.460 of 1996. For the reasons best known, the first respondent did not choose to approach the criminal court for a period of fifteen years to lodge the complaint. The reason shown by the complainant is as follows:

This complaint is filed with 15 years delay. Because complainant is trying several times to get financial assistance from the Government on the excuse of illness due to the negligent firing of the Accused on the back of at the vertebral column region of the complainant. But the Government not provided it since 1991 to 2006. Because complainant filed this case who is caused bullet injury and permanent disability to the complainant is punishable and also will be payable compensation to the complainant.

15. A perusal of the above paragraph, at a glance, clearly demonstrates that the first respondent filed the complaint having failed to get compensation from the Government. Merely because the petitioner could not get compensation from the Government, by itself enables him to file complaint against the petitioner after lapse of 15 years from the date of alleged incident, is one of the aspects to be considered. Simply because there is no period of limitation to file the complaint for the offence under Section 326 IPC, whether

that itself justifies the complainant to sleep over for abnormal period and file complaint as and when he pleases. By perusing the complaint, certainly an ordinary prudent man would come to a conclusion that the first respondent filed the complaint to get compensation from the Government rather than to see that the petitioner will be punished as per law. The first respondent having filed the writ petition claiming compensation from the Government, if not expressly, by necessary implication, did not choose to prosecute the petitioner in accordance with law. Had the Government awarded compensation, the first respondent might not have chosen to file the present complaint. No citizen more particularly the Government employees cannot be forced to face prosecution, after lapse of 15 years, at the whims and fancies of the complainants, who having failed to get fruitful result by resorting to civil remedy. Having lost the battle on the civil side, the first respondent reverted to seek redressal by approaching the criminal court. It is needless to say that one has to assign reasons much less cogent and valid reasons for non-filing of the complaint within a reasonable time. Simply because there is no period of limitation that itself would not enable the parties to file vexatious complaints with an ulterior motive to force the accused to face the rigour of criminal trial. It is not the case of the first respondent that he is not aware of the court procedure thereby he has taken fifteen years' time to approach the criminal court. Nowhere it is mentioned that due to reasons beyond his control or due to legal disability he could not approach the court within a reasonable time in order to justify the action of the first respondent to approach the court after lapse of fifteen years. If the courts allow the complaints

without scrutinizing the reasons for abnormal coupled with unexplained delay certainly it would amount to encouraging the litigant public to file the complaints using the court as a forum to settle their scores, which they failed to achieve by other legal means. The complaint is conspicuously silent as to the reasons much less cogent and valid reasons for not approaching the court within a reasonable time. This court is very much conscious of Section 468 Cr.P.C., and at the same time, the court shall not lose sight of the conduct and *bona fides* of the complainants in approaching the court after long lapse of time.

16. Having regard to the facts and circumstances of the case, I am of the considered view that the first respondent approached the Court after lapse of fifteen years, having failed to get compensation from the Government.

17. In the light of the foregoing discussion, I am of the considered view that taking of cognizance of offence by the trial court under Section 326 IPC without prior sanction for prosecution of the petitioner is not legally sustainable. When the taking of cognizance of offence itself is non-est in the eye of law, proceeding with the trial is a futile exercise. Therefore, it is a fit case to discharge the petitioner for the offence under Section 326 IPC.

18. In the result, the criminal revision case is allowed, setting aside the order dated 17.1.2013 in CrI.M.P. No.2715 of 2011 in C.C. No.865 of 2010 on the file of the Court of Chief Metropolitan Magistrate, Vijayawada, Krishna District. Consequently, CrI.M.P. No.2715 of 2011 is allowed, discharging the petitioner for the

offence under Section 326 IPC in C.C. No.865 of 2010 on the file of the Court of Chief Metropolitan Magistrate, Vijayawada, Krishna District. Miscellaneous petitions if any pending in this criminal revision case shall stand closed.

T.SUNIL CHOWDARY, J

January 19, 2017.

NOTE:

L.R. Copy be marked : YES / NO
YS

