

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2502 OF 2017

ORDER:

The three petitioners herein who are arraigned as Accused Nos.1, 3 & 4 in C.C. No.926 of 2016 on the file of XVII-Additional Chief Metropolitan Magistrate, Hyderabad, filed the present petition under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code') requesting to quash the proceedings in the aforesaid Calendar Case.

2. All the three petitioners are Police Constables and by the date of incident they were working in Musheerabad police station and presently in Moghulpura, Rein Bazar and Asif Nagar police stations respectively. They alleged to have committed the offences punishable under Sections 341, 324 & 506 of IPC read with Section 34 of IPC.

3. The 2nd respondent, Mallapuram Vasu, is the *de facto* complainant. He is a Software Engineer by profession. Among the witnesses, besides the 2nd respondent, the other three witnesses i.e., L.W.2 – Sri Molugu Nitin, L.W.3 – Sri Molugu Nirish, and L.W.4 – Sri Badda Preetham Prem Sagar are Software Engineers and businessmen respectively, and all of them are cited as injured and eye-witnesses in the present calendar case.

4. Heard Sri K.G. Krishna Murthy, learned Senior Counsel, assisted by Sri K. Ramamohan, learned counsel for the petitioners and the learned Public Prosecutor for the State of Telangana.

5. The case of the *de facto* complainant is that on 25.6.2015 early hours between 2.30 a.m. and 3.00 a.m., he along with his friends, Mr. Nitin, Mr. Nirish and Mr. Preetam returning from a house party and they all stopped at Laxmi Anusha Apartments, near Musheerabad cross-roads to drop Mr. Nitin. Suddenly, they found a group of police men arrived thereat on two wheelers, amongst whom two or three were in drunken state and started abusing them in filthy language. When they questioned them, they started beating them with *lathis*, besides brutally kicking, without any reason, and sometime thereafter, a police car arrived at the scene and took them to police station. Even at the police station, 12 to 15 police men started beating them with rubber sticks and fiber sticks. The only reason was that they were questioning the manhandling act. They also threw the victims on the floor, kicked and bashed them as they liked. They never bothered to inform them the charges against them.

6. The allegations would show that in the afternoon, having found grievous injuries on three of them, Mr. Sampath, Sub-Inspector of Police and Mr. Sai Kumar fabricated a case and produced only Mr. Preetam before the Court. He was sent for judicial custody and thereafter, they started threatening them with dire consequences that they would kill them in the lock up itself in case they complain against the police regarding the brutal and illegal act. After Mr. Preetam was remanded, they started negotiating and demanding Rs.3 lakhs from three of them and insisted for the same before the

ensuing Sunday evening or else they again torture them in the police station and book them for the same case. Since there was no other option, they feared and partially accepted the demand and then only, they freed them from the police station.

7. The complainant states that he even went to Gandhi Hospital as he was unable to bear the pains, and previous thereto he visited a few nursing homes for treatment as he was running high temperature also, but the doctors asked him the reason for his injuries, when he explained the circumstances, they refused to treat him stating that it was a medico legal case and as advised by them he went to Gandhi Government Hospital for treatment and there also the Doctor asked him to get a requisition from Musheerabad Police Station in order to give him treatment. But, he never dared to visit Musheerabad Police Station because of cruelty meted out to him. Thus, he referred to the highhanded acts of police and according to him even the CCTV footage at Musheerabad Police Station on the early hours of 25.6.2015, would show the incident of attack on them and causing injuries by the police.

8. He mentions that Mr. Nitin and himself are NRIs from Ireland, Mr. Preetam is also NRI returned and they made complaint to the Chief Minister for the State of Telangana and the Home Minister of Telangana; Ambassador, Irish Embassy, New Delhi and the Assistant Commissioner of Police, Chikkadapally Division. Then, the Assistant Commissioner of Police forwarded the complaint to the

Station House Officer, Musheerabad to register a case under appropriate sections of law and investigate.

9. In the petition, the petitioners would raise the following points.

They were along with other police officers on night duty on 24.6.2015 early hours along with Assistant Sub-Inspector of Police Mr. Venkatesham, Head Constables - Mr. Nageswara Rao, Tirupatiah, Car Driver - Mr. Manikanta and Mr. Nagaraju and Constables Mr. Giribabu, Mr. Sriramulu and Mr. Sai Kumar. According to them, a complaint was received under 100 dial number that the complainant along with his three friends, Mr. Preetham, Mr. Nikhil and Mr. Nithin have been creating nuisance in the public place, and on receipt of the said information, the Station House Officer, Duty Head Constable deputed one Constable and Home Guard to spot and accordingly they went to the spot and there was some argument between the 2nd respondent and the Home Guard and the Constable, then the 2nd respondent and his friends took the cell phone from the Home Guard and also manhandled the Constable, and on such information additional force through patro car was sent to the spot to bring them to the police station. But the situation was not under control, and again patro car was deputed to the spot, and, the 2nd respondent and others were brought to the police station.

10. They stated that the Assistant Sub-Inspector of Police Mr. Venkatesham was actually on night duty and he was supposed to be on patrol duty in the entire night till morning 8 O' clock and he has

to make an entry in the General Diary at about 5 O' clock, but instead of attending night duty he was sleeping in the police station and he did not attend the spot when the incident occurred.

11. Another Head Constable Mr. Nageswara Rao was also on night duty and he is the Station House Officer supposed to stay in the police station in the night, but he was also sleeping in the 2nd floor and did not attend the incident though, the 2nd respondent and his three friends were brought to the police station, and the Station House Officer, who is supposed to register a case against them, but he has not done his duty.

12. On the next morning the other officer namely, Mr. Sampath Kumar, Sub-Inspector of Police registered a case in Crime No.146 of 2015 under Section 353 read with Section 34 of IPC basing on the statement of Mr. Venkatesham, ASI of Police and Mr. Nageswara Rao, Head Constable, who were on night duty, not at all present in the incident or at the spot.

13. Turning to the submissions made by the learned Senior counsel for the petitioners, he mainly insists on one particular ground that being prior sanction was not obtained under Section 197 of the Code before taking cognizance of the offences against the petitioners and the same is fatal, and, therefore, the petitioners cannot be made to undergo the rigors of the trial. He placed reliance in **S. Bala Krishna**

v. State of Telangana¹ and the Guidelines 1, 4, 6 and 7 laid down by the Hon'ble Apex Court in **Rupan Deol Bajaj v. Kanwar Pal Singh Gill**². The other incidental ground is even if the entire case of the prosecution evidence taken at their face value and even accepted in its entirety do not *prima facie* constitute any offence much less the offences punishable under Sections 341, 324 & 506 of IPC read with Section 34 of IPC.

14. The next submission is that the *de facto* complainant did not mention the names of the petitioners, and only mentioned that 12 to 15 persons beat them and no identification parade was conducted on the petitioners and that the petitioners are roped in a false case.

15. His submission is that the prosecution suppressed the genesis and came forward with improbable version with collusion of some police officials, who are involved in this case, for letting them off and the petitioners are shown as accused in the aforesaid crime number as scapegoats. Incidentally, he would submit that separate case has been filed against the other persons, who were along with 2nd respondent/*de facto* complainant on the date of incident and created nuisance.

16. It is pleaded that the petitioners 2 and 3 got selected as Sub-Inspectors of Police and they were deprived of the posts on account of their false implication.

¹ 2016 (2) ALT (Cri.) 428 (A.P.)

² 1996 Cri. L. J. 381 (SC) = (1995) 6 SCC 194

17. Amongst the aforesaid grounds, except the ground relating to non-obtaining sanction under Section 197 of the Code, the other grounds relate to disputed facts.

18. A perusal of Section 161 Cr.P.C statements of L.Ws.1 to 4, who are the complainant and eye-witnesses in the present case, and the circumstance that the medical officers who treated them are also cited as witnesses in the List of Memo would all, even at this stage is sufficient to view that a *prima facie* case is made out against the petitioners. The ground that the responsible police officers who ought to have taken part and they were sleeping and basing on their statements only FIR was registered against the 2nd respondent can only be examined during trial, but, not at this stage, as truth or otherwise can only be traced out on appreciation of evidence that would be let in by the prosecution and the answers that would be elicited by the defence.

19. The learned Public Prosecutor would submit that no sanction under Section 197 of the Code is required to prosecute the petitioners as the acts attributed to the petitioners were not done in discharge of official duties.

20. The learned public prosecutor places reliance in **Sant Kumar v. State of Punjab**³ and **Devinder Singh v. State of Punjab, through CBI**⁴.

³ 2003 Cri. L.J 2949

21. Now, advertent to the submissions of learned senior counsel for the petitioners, in **S. Bala Krishna** (1 supra), a learned Single Judge of this Court referring to the rulings in **State of Karnataka v. C. Nagarajaswamy**⁵, **State of Goa v. Babu Thomas**⁶ and **D.T. Virupakshappa v. C. Subash**⁷ for the propositions, that the cognizance cannot be taken by the Court without sanction; in case cognizance is taken without there being sanction the error that creeps into is so fundamental that invalidates the proceedings conducted by the trial Court by relegating the parties to apposition where the competent authorities issued an appropriate order sanctioning the prosecution; and the object of protection provided under Section 197 of the Code is to protect responsible public servant against the institution of possibly vexatious criminal proceedings for the offences alleged to have been committed by them while they are acting or purporting to act as public servants; if in doing his official duty he even acted in excess of a duty when there is reasonable connection between the act and performance of duty, the excess will not be sufficient ground to deprive the protection to the public servant; when police allegedly exceeding in exercise of his power in alleging while investigating he assaulted the complainant and detained him in the police station, said offence committed is when reasonably connected with the performance of the official duty, held that previous sanction

⁴ (2016) 12 SCC 87

⁵ 2006 (1) ALT (CrL.) 119 (S.C.) = AIR 2005 SC 4305 = (2005) 8 SCC 370

⁶ 2008 (5) ALT 5.1 (DN SC) = (2005) 8 SCC 130

⁷ 2015 (3) ALT (CrL.) 143 (SC) = (2015) 12 SCC 231

is mandatory and the proceedings thereby vitiated. The learned counsel for the petitioners, therefore, would submit that in view of the law declared by the Hon'ble Apex Court in **D.T. Virupakshappa** (7 supra) cognizance taken by the learned Magistrate amounts to fundamental error and invalidates the proceedings in case trial is taken up, and, therefore, sought to quash the proceedings.

22. Incidentally, the learned senior counsel for the petitioners agitated that the guidelines 1, 4, 6 & 7 laid down in **Rupan Deol Bajaj** (2 supra) are applicable to the facts of this case, but, in fact the said guidelines have been laid down by the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal**⁸. The said guidelines have been extracted by the Hon'ble Supreme Court in paragraph-8 in **Rupan Deol Bajaj** (2 supra), thus:

“8. The question under what circumstances and in what categories of cases the High Court can quash an F.I.R. or a complaint in exercise of its powers under Article 226 of the Constitution of India or under Section 482 Cr. P.C. has been engaging the attention of this Court for long. Indeed, the learned Counsel for the parties invited our attention to some of those decisions. We need not, however, refer to them as in *State of Haryana v. Bhajan Lal* [1992Cri.L.J.527] this Court considered its earlier decisions, including those referred to by the learned Counsel, and answered the above question as under :

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or

⁸ 1992 Supp (1) SCC 335

otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability

or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

(emphasis supplied)

23. When examined the contents of the complaint referred to hereinbefore, certainly, it is not a case to arrive at that it would fit into either guideline 1 or 4 or 6 or 7 as none of the situations would occur in the present fact situation available in the instant case.

24. Now, the question that remains for examination is whether sanction under Section 197 of the Code is a *sine qua non*. This particular contention raised by the learned senior counsel referring to the decision in **D.T. Virupakshappa** (7 supra) requires examination in the light of the rulings relied on by the learned Public Prosecutor.

25. In **Sant Kumar** (3 supra), a learned Single Judge of Punjab High Court has extracted the table summarizing the directions given by the Provincial Government under Clause (b) of sub-section (1) of Section 241 of the Government of India Act, 1935, in regard to the authorities competent to make appointments to the non-gazetted ranks in the Police Department. It refers to the Inspectors, Sergeants, Sub-Inspector and Assistant Sub-Inspectors under the relevant ‘class of Government servant’ and the authority to whom power of appointment is delegated and also the extent of delegation. The submission of the learned Public Prosecutor is that police constables are not finding place in the said table and, therefore, there is no need

to obtain prior sanction so far as prosecution of police constables is concerned.

26. The decision in **Devinder Singh** (4 supra), relied on by the learned Public Prosecutor, is a case where the officers of Punjab Police were the accused. The question involved therein was whether in view of the provisions contained in Section 6 of Punjab Disturbed Areas Act, 1983 (as amended in 1989) the prosecution or other legal proceedings relating to police officers can be instituted without prior sanction of the Central Government. The appellants in the criminal appeal set up their case, that they were entrusted with the duties and responsibilities of public order and peace in the State of Punjab; in the early 1980s there was a sudden spurt in the terrorist activities; massive killings at the hands of terrorists; looting, extortions, kidnapping, resulting into total collapse of civil administration; more than 25,000 civilians, 1800 men in uniform and their relatives had been killed at the hands of the terrorists resulting into migration of civil population in the border districts of Amritsar, Ferozpur and Gurdaspur; on 22.7.1993 four persons were killed in an encounter with the police; prosecution alleged that they were killed in a fake encounter; on the basis of the complaint lodged by one Chaman Lal, father of one of the deceased, the CBI obtained sanction from the State Government to prosecute the accused as at the relevant time, under Section 6 of the 1983 Act, sanction from Central Government was required; but on the basis of sanction obtained from the State

Government, the CBI filed the charge-sheet against the accused persons in the Court of Special Judge Patiala; the appellants filed application under Section 227 of the Code for discharge on the ground that they had acted in the incident in the course of their duty and sanction granted by the State Government was without jurisdiction, illegal and void.

27. The application filed, therefor, by the police officials was contested by the CBI contending that Sections 4 & 5 of the 1983 Act were not applicable and there was no need for obtaining any sanction because the deceased was killed in a fake encounter. The same was dismissed and aggrieved thereby they approached the High Court by filing Criminal Revision Petition and the same was also dismissed holding that as per prosecution case it is a case of fake encounter and as such sanction is not required and the same could not be said to be an act in discharge of official duties; aggrieved over the same, they approached the Hon'ble Supreme Court. The Hon'ble Supreme Court having surveyed the rulings in *Matajog Dobey v. H.C. Bhari* [1955 (2) SCR 925 = AIR 1956 SC 44], *Sarjoo Prasad v. The King-Emperor* [(1945) F.C.R. 227], *Bhappa Singh v. Ram Pal Singh* [1981 (Supp) SCC 12], *State of Maharashtra v. Dr. Budhikota Subbarao* [(1993) 3 SCC 339], *S.B. Saha v. M.S. Kochar* [(1979) 4 SCC 177], *P. Arulswami v. State of Madras* [(1967) 1 SCR 201], *Mansukhlal Vithaldas Chauhan v. State of Gujarat* [(1997) 7 SCC 622], *Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan* [(1998) 1 SCC

205], K.M. Mathew v. State of Kerala [(1992) 1 SCC 217], Pukhraj v. State of Rajasthan [(1973) 2 SCC 701], Gauri Shankar Prasad v. State of Bihar [(2000) 5 SCC 15], Abdul Wahab Ansari v. State of Bihar [(2000) 8 SCC 500], P.K. Pradhan v. State of Sikkim, rep. by the Central Bureau of Investigation [(2001) 6 SCC 704], State of H.P. v. M.P. Gupta [(2004) 2 SCC 349], State of Orissa v. Ganesh Chandra Jew [(2004) 8 SCC 40], K. Kalimuthu v. State by DSP [(2005) 4 SCC 512], State of Karnataka through CBI v. C. Nagarajaswamy (5 supra), Sankaran Moitra v. Sadhna Das [(2006) 4 SCC 584], Harpal Singh v. State of Punjab [(2007) 13 SCC 387], General Officer Commanding, Rashtriya Rifles v. Central Bureau of Investigation [(2012) 6 SCC 228], D.T. Virupakshappa v. C. Subash (7 supra), Om Prakash v. State of Jharkand [(2012) 12 SCC 72], Manorama Tiwari v. Surendra Nath Rai [(2016) 1 SCC 594], Shamboo Nath Misra v. State of U.P. [(1997) 5 SCC 326], S.K. Zutshi v. Bimal Debnath [(2004) 8 SCC 31], P.P. Unnikrishnan v. Puttiyottil Alikutty (2000) 8 SCC 131, Satyavir Singh Rathi, Assistant Commissioner of Police v. State through Central Bureau of Investigation [(2011) 6 SCC 1] and Paramjit Kaur (Mrs) v. State of Punjab [(1996) 7 SCC 20], summarized the principles, emerging from these rulings, in paragraph-37, thus:

“37. The principles emerging from the aforesaid decisions are summarized hereunder:

I. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best

of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

II. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent [Section 197](#) Cr.P.C has to be construed narrowly and in a restricted manner.

III. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under [section 197](#) Cr.P.C. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.

IV. In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary under [Section 197](#) Cr.P.C., but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of [Section 197](#) Cr.P.C. would apply.

V. In case sanction is necessary it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

VI. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.

VII. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

VIII. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage

of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty was. Accused has the right to lead evidence in support of his case on merits.

IX. In some case it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.”

In paragraph-38, it is held thus:

“38. In the instant cases, the allegation as per the prosecution case it was a case of fake encounter or death caused by torture whereas the defence of the accused person is that it was a case in discharge of official duty and as the deceased was involved in the terrorist activities and while maintaining law and order the incident has taken place. The incident was in the course of discharge of official duty. Considering the aforesaid principles in case the version of the prosecution is found to be correct there is no requirement of any sanction. However it would be open to the accused persons to adduce the evidence in defence and to submit such other materials on record indicating that the incident has taken place in discharge of their official duties and the orders passed earlier would not come in the way of the trial court to decide the question afresh in the light of the aforesaid principles from stage to stage or even at the time of conclusion of the trial at the time of judgment. As at this stage it cannot be said which version is correct. The trial court has prima facie to proceed on the basis of prosecution version and can re-decide the question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to the notice of the court that there was a reasonable nexus of the incident with discharge of official duty, the court shall re-examine the question of sanction and take decision in accordance with law. The trial to proceed on the aforesaid basis. Accordingly, we dispose of the appeals/writ petition in the light of the aforesaid directions.”

Thus, the decisions relied on by the learned senior counsel for the petitioners and also the decision in **D.T. Virupakshappa** (7 supra) are also referred to in **Devinder Singh** (4 supra).

28. Now, the question is whether the petitioners herein were authorized to assault the 2nd respondent/*de facto* complainant and his

three companions, and whether can it be said that the offences alleged against them are reasonably connected with the performance of their official duties and thereby require prior sanction and, incidentally, whether the *de facto* complainant and his three companions were entrusted to the custody of the petitioners. These are the questions, which require determination and can be done only if trial is proceeded with and squarely fall within the principles VIII and IX summarized by the Hon'ble Supreme Court in **Devinder Singh** (4 supra). There are two versions occurring before this Court. The first is that the petitioners have been totally denying their involvement in the assault alleged against them. The other version is they did involve in assaulting the 2nd respondent/*de facto* complainant and his companions, in which direction they were examined by the medical officers and the medical certificates have been issued by the medical officers, who are cited as the prosecution witnesses in the list of memo appended to the charge sheet.

29. Thus, it is premature to hold at this stage that for want of sanction the cognizance taken by the learned Magistrate for the offences alleged against the petitioners is an error so fundamental to vitiate further proceedings. Therefore, it would be appropriate if the trial Court is allowed to proceed on the basis of the prosecution version and can decide the present question in case from the evidence adduced by the prosecution or by the accused or any other manner it comes to the notice of the learned Magistrate that there was

reasonable nexus of the incident with discharge of official duty by the petitioners in which case the Court shall examine the question of sanction and take decision in accordance with law in view of the observations of the Hon'ble Supreme Court in paragraph-38 afore extracted in **Devinder Singh** (4 supra).

30. Accordingly, the present Criminal Petition is disposed of.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition shall stand closed.

Dt.20.06.2017
gbs

A. SHANKAR NARAYANA, J

