

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.6282 of 2017

ORDER:

The petitioner is accused No.1 in C.C.No.307 of 2015 on the file of learned Judicial Magistrate of First Class, Nagarkurnool, Mahabubnagar District, which is outcome of the private complaint of the 1st respondent-complainant, taken cognizance for the offences punishable under Sections 166, 167, 193, 196, 420, 464, 465, 466, 468, 468, 471, 201, 120-B r/w 34 IPC.

2. The contentions in the quash petition are that the petitioner/accused is innocent and falsely implicated and the allegations of the complaint even taken on face value do not constitute any of the offences alleged against him and fastening of any criminal liability on the petitioner is nothing but an abuse of process of law and the petitioner is not the Investigating Officer of STC No.154 of 2014 and he is not involved with the proceedings in said case in any manner, as such the allegations are ex-facie false and baseless. The petitioner/accused being the Station House Officer and as per the Order of Police Manual, he has entrusted the investigation to his immediate subordinate to enquire and investigate, as he is pre-occupied with the other cases pertaining to grave offences. It is contended that even if the Police Personnel intended to support the accused, they would not have to take the risk of fabricating a new complaint with forged signature,

when they knew it very well that the complaint is given by an Advocate and would necessarily come to his knowledge and they have to file charge sheet on the complaint. It is further contended that it is highly unbelievable that the complainant being a practicing advocate did not obtain acknowledgment of the complaint allegedly given to the petitioner on 20.03.2014. It is also contended that no previous sanction has been obtained from the Government for prosecuting the case against the petitioner, who is a public servant and the proceedings against him are not sustainable. It is also contended that in fact the present case has been filed by the complainant with false allegations, as the petitioner has not conceded to his demand to coerce the accused in said STC No.154 of 2014 to settle the issue with the complainant by complying his monetary demands and the case against the petitioner is not maintainable and is liable to be quashed.

3. The averments in the private complaint are that the complainant is native of Cherla Itkyala Village and a practicing advocate and also having agricultural lands at his village in S.No.173 to an extent of Ac.6.27 guntas and also in other survey numbers. He raised Mango and Sapota gardens and also coconut trees aged 5 years in it by providing water with the help of bore wells and electric Motors. On 19.03.2014, the neighbor land holder of the complainant by name Daspally Narsi Reddy @ Cheemarla Narsi Reedy i.e. accused No.4 herein with a malafide intention has set fire to

said Mango and Sapota gardens of the complainant and entire Mango and sapota garden trees were burnt also the cable and pipe lines were also burnt and he suffered a loss of more than Rs.8 lakhs and when the fire service, i.e., LW.6 tried to extinguish the fire, the entire trees were burnt. On 20.03.2014, the complainant lodged a written compliant to the S.I. Tadoor (A1) with regard to the above incident and A1 visited the scene of offence on the same day and promised that he will take stringent action against A4 by registering the case immediately under Section 435 IPC. Even after repeated requests by the complainant, A.1 did not register the crime but promised the complainant to cover the loss suffered and the complainant on good faith did not insist A1 for case.

3(a). It is averred that on 01.09.2014 the complainant came to know that the police Tadoor filed charge sheet before JFCM Special Mobile Court, Nagarkurnool, in the above matter against said Narsi Reddy and the case was investigated by one Renaiiah Head constable P.S. Tadoor (A2) by registering as STC No.154 of 2014 under section 427 IPC. The complainant obtained the certified copy of the charge sheet, compliant, panchanama, and statements of the witnesses and after verification of the same, to his surprise the original compliant given on 20.03.2014 was suppressed and created a new compliant with subsequent date as 17.04.2014 by forging the signature of the complainant over it with different hand writing. The date of offence is also

changed as 15.04.2014 instead of 19.03.2014. The names of the witnesses also changed. The names of witness shown as eye witnesses are the strong followers of accused-Narsi Reddy have been mentioned in charge sheet. The scene of offence panchanama is also created as if it was conducted on 17.04.2014. The names of punch witnesses shown as Sathyam Goud (LW.2) and Mallaiah (LW.3), but they never signed any panchanama and no panchanama was conducted in their presence more particularly on 17.04.2014 and their signatures are also forged on said panchanama. It is also averred that on 17.04.2014, A2 never visited the scene of offence and no panchanama was conducted by him and the said panchanama is created one by forging the signatures of LWs.2 & 3. It is submitted that the A3 has scribed the alleged compliant dated 17.04.2014 and signature of the complainant is forged over it by the accused.

3(b). It is also averred that A1 to A3 conspired together and colluded with accused No.4, in order to escape him from the punishment and filed false charge sheet in STC.No.154 of 2014. It is also averred that the Section of law under Section 435 IPC that attracts to the case, but to help A4, the A1 to A3 filed petty case and charge sheet under section 427 IPC, to gain wrongfully from A4 created all the false documents and filed before the Court. Hence, to take action.

4. The learned counsel for the petitioner/A.1 reiterated the above contentions and sought for quashing of the

proceedings as there was no sanction obtained before taking cognizance. Whereas it is the submission of the learned counsel for the 1st respondent-complainant that the cognizance is sustainable and no sanction is required as act of petitioner/accused does not come under the discharge of his official duty and sought for dismissal of the petition.

5. Heard and perused the material on record.

6. Before coming to the facts, it is necessary to refer that in **Rakesh Kumar Mishra Vs. State of Bihar & Ors**¹ it was held by the Apex Court in this regard and on the scope of Section 197 CrPC, referring to **Bakhshish Singh Brar v. Smt. Gurmej Kaur**² that 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 sanction. **Further, the words "when any person who is or was a public servant" employed in 197 CrPC were based on the observation at paragraph 15.123 of the 41st Report of the Law Commission of "it appears to us that protection under the Section is needed as much after retirement of the public servant as before retirement.** The protection afforded by the Section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the

¹(2006) 1 SCC 557

² AIR (1988) SC 257

protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant". It is the above position that was highlighted in **R.Balakrishna Pillai Vs State of Kerala**³ and reiterated in the later expressions in **State of M.P. vs. M.P. Gupta**⁴, **State of Orissa through Kumar Raghvendra Singh and Ors. vs. Ganesh Chandra Jew**⁵ and **Shri S.K. Lutshi and Anr. vs. Shri Primal Debnath**⁶.

6(a). As per Section 197(1) supra the sanction is mandatory from the government concerned of the public servant, the accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of official duty and without such previous sanction, no Court shall take cognizance such alleging offences.

6(b). On the scope of sanction whether required or not to decide for prosecution on the acts alleged as offence committed by a public servant were in discharge of official duty to decide with reference to facts of each case and the stage when to raise and the way how to understand the expressions with reference to facts, the Apex Court in **N.K.**

³1996 AIR 901=1996 SCC (1) 478

⁴ [2004] 2 SCC 349

⁵ [2004] 8 SCC 40

⁶ [2004] 8 SCC 31

Ganguly Vs. CBI, New Delhi⁷, while saying a decision is an authority for what it actually decides and reference to a particular sentence in the context of the factual scenario cannot be read out of context, held referring to the earlier expressions right from that of Federal Court in **Hori Ram Singh**⁸, of Privy Council in **H.H.B. Gill**⁹, of Calcutta High Court in **Abani Kumar Benarji**¹⁰, of the Apex Court in **R.R.Chari-I**¹¹, also of the Apex Court in **Sreekantaiah**¹², also of the Apex Court (3JB) in **Amrik Singh**¹³, also of the Apex Court (5JB) in **Matajog Dobey**¹⁴, also of the Apex Court in **K.Satwanth Singh**¹⁵, also of the Apex Court in **R.R.Chari-II**¹⁶, also of the Apex Court in **Bajnath**¹⁷, also of the Apex Court in **B.Saha**¹⁸, also of the Apex Court in **R.S.Nayak**¹⁹, also of the Apex Court in **R.Balakrishna Pillai**²⁰, also of the Apex Court in **Abdul Wahab Ansari**²¹, also of the Apex Court in **Rakesh Kumar Mishra**²², also of the Apex Court in **Sankaran Moitra**²³, also of the Apex Court in **Prakash Singh Badal** supra and also of the Apex Court in **Sheetla Sahai** supra and by quoted with approval **Hori Ram Singh** supra

⁷ 2016(2) SCC 143

⁸ AIR 1939 43

⁹ AIR 1948 128

¹⁰ AIR 1950 437

¹¹ AIR 1951 207

¹² AIR 1955 287

¹³ AIR 1955 309

¹⁴ AIR 1956 44

¹⁵ AIR 1960 266

¹⁶ AIR 1962 1573

¹⁷ AIR 1966 220

¹⁸ 1979 (4) SCC 177

¹⁹ 1984 (2) SCC 183

²⁰ 1996 (1) SCC 478

²¹ 2000 (8) SCC 500

²² 2006 (1) SCC 557

²³ 2006 (4) SCC 584

among other including **Amrik Singh** supra and of the Constitution Bench in **B.Saha** supra that **the issue of requirement of prior sanction under Section 197 of CrPC can be raised at any stage of the proceedings.** It was also held referring to the above among other including **H.H.B.Gill** supra, three judge bench in **Bajnath** supra and another Constitution bench in **Matajog Dobey** supra, that Prior sanction for taking cognizance is required in the three situations of, a) the act complained of attached to the official character of the person doing it; b) cases in which the official character of the person gave him an opportunity for the commission of the crime; and c) the offence was committed while the accused was actually engaged in the performance of official duties. It can be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. No doubt, there must be a reasonable connection between the act and the discharge of official duty to have the protection. If the act complained of is directly concerned with his official duties so that, if questioned it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the

protection contemplated by Section 197 of the Criminal Procedure Code will be attracted.

6(c). The three judge Bench expression of Apex Court in **P.K.Pradhan Vs. State of Sikkim Rep. by the CBI**²⁴ held at paras-5 to 16 by referring to several of the earlier expressions right from **Hori Ramsingh, HHB Gill, Amrik Singh, Sreekantiah Ramayya Munipalli, Matajog Dobey, Omprakash Gupta, B.Saha, Baijnath Gupta, Abdul Vahab Ansari, K.Satwant Singh** (supra), that the legislative mandate engrafted in sub section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the Statute from taking cognizance. It is well settled that the question of sanction u/sec. 197 of CrPC can be raised at any time after the cognizance, may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well, in appeal.

6(d). In **Rajib Ranjan** (supra) at paras 14 to 18, it is observed that sanction is necessary if the offence alleged

²⁴ AIR 2001 SC 2547

against the public servant is committed by him while acting or purporting to act in discharge of his official duties as held in **Buddi Kota Subba Rao Vs. K.Prakasham** at para-6 of the act or omission on facts found a reasonable connection to the discharge of his duty by the accused, sanction is required.

6(e). In **Om Prakash V. State of Jharkhand** and **Kailashpathi Singh V. Rajiv Ranjan Singh**²⁵(common order) in relation to the encounter killings from the attack against police, it was observed on the scope of Section 197 Cr.P.C that prior sanction is a pre-condition for taking cognizance of offences against the police officials and there is no requirement for such accused officials to wait till framing of charges to raise the plea.

6(f). In **Punjab State Warehousing Corp. Vs. Bhushan Chander**²⁶ referring to earlier expressions including of **Sreekantiah Ramayya Munipalli** supra, it was held that it is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. On facts it was held that the accused is or was not a public servant to get protection of Section 197 CrPC.

6(g). In **Anil Kumar vs M.K. Aiyappa** supra, it was observed referring to **Subramaniam Swamy** supra that the expression “cognizance” which appears in Section 197 CrPC

²⁵ (2012) 12 SCC 72

²⁶ AIR 2016 SC 3014

came up for consideration before a three-Judge Bench in **State of Uttar Pradesh v. Paras Nath Singh**²⁷, and this Court expressed the following view:

“6.....So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, ‘no court shall take cognizance of such offence except with the previous sanction’. Use of the words ‘no’ and ‘shall’ makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black’s Law Dictionary the word ‘cognizance’ means ‘jurisdiction’ or ‘the exercise of jurisdiction’ or ‘power to try and determine causes’. **In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.**”

6(h). In the case of **General Officer, Commanding v. CBI**²⁸, the Apex Court held that- **if the law requires sanction and the court proceeds against a public servant without sanction; the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio.**

7. The learned counsel for the petitioner placed reliance on the expression of the Apex Court in **D.T. Virupakshappa**

²⁷ (2009) 6 SCC 372

²⁸ [2012] 5 SCR 599

Vs. C.Subash²⁹ referring to **Om Prakash** supra held as follows:

“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). 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.”

8. From the above legal position coming to the case on hand whether sanction required or not concerned, from the very complaint and referred report and the statement, the act of the petitioner/accused No.1 as Sub Inspector of Police by name P.Tirupathi was in discharge of his official duties as Investigating Officer in registration of the crime in STC.No.154 of 2014 with the allegation of instead of charging the accused therein under Section 435 IPC registered the crime and investigated for the offence under Section 427 IPC.

9. Once such is the case, it is integral part of the official discharge of duties thereby sanction is required from the above legal position as it is reasonably connected with discharge of his official duty. In discharge of his official duty his mentioning of wrong provision of law even deliberately

²⁹ AIR 2015 SC 2022

that will not come outside the purview of the official discharge of duties.

10. Further as per **Anil Kumar** supra, from the private complaint to take cognizance sanction is pre condition required with the private complaint to be filed. Once sanction is required from what is referred supra and the impugned order of the learned Magistrate in taking cognizance is *per se* unsustainable without going into the merits the prosecution is liable to be quashed for want of sanction.

11. Leave it apart even on further facts of the case on hand, the defacto-complainant is not layman but a lawman being the Practicing Advocate, and if at all he has given report on 20.03.2014 for the alleged occurrence of fire and damage on 19.03.2014, he could easily know the registration or not of FIR, leave about he was to obtain acknowledgment, he could have obtained copy of FIR being the defacto-complaint. It is further he was supposed to be examined, after registration of Fir, during investigation u/sec.162CrPC. It is believable that he slept over till 01.09.2014 without enquiring any FIR registered or not and if so for what provision and if so why he was not examined during investigation. Further, from the complaint's very say of A.1 allegedly promised him to cover his loss from A.4-Narsi Reddy, why he later kept quiet even after came to know on 01.09.2014 to continue the STC proceedings from Head Constable A.2's investigation and also deposed before Court, instead of raising protest or filing

petition under Section 157 CrPC to know progress of investigation earlier or even to request the magistrate where crime pending from filing of STC to cause further investigation or at least file private complaint case and ask for stay of STC proceedings either under Section 210 or Section 157 and 173(8) read with 190 and 200 CrPC, and not even by approaching the High Court for any such relief invoking Section 482 CrPC.

12. For all these reasons the C.C.No.307 of 2015 proceedings no way can be sustained to subserve the ends of Justice against the police officials for the acts alleged are reasonably connected with the discharge of their duties.

13. Having regard to the above and in the result, this Criminal Petition is allowed and the proceedings in C.C.No.307 of 2015 pending against the petitioner-A.1 are quashed and bail bonds cancelled.

14. Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 14.11.2018
Ska/vvr