

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Petition No.2603 of 2011

ORDER :

This petition under Section 482 Cr.P.C. is filed to call for the records relating to and connected with C.C. No.866 of 2010 on the file of the II Additional Judicial First Class Magistrate, Eluru, West Godavari District.

2. The contention of the petitioner is that for want of sanction under Section 197 Cr.P.C., because the petitioner/accused is a public servant, the cognizance taken by the Chief Judicial Magistrate, without examining the complaint filed by the 2nd respondent under Section 200 Cr.P.C., is illegal and contrary to law, since there is no evidence on record showing that the petitioner has illegally detained the accused for more than 24 hours. *Suo motu* transfer of the complaint, without there being an application under Section 191 Cr.P.C. by the Chief Judicial Magistrate, is without power or authority.

3. *Per contra* the respondents contended that the petitioner has forged the documents, gave false evidence before the Court and used the forged documents as genuine having knowledge that he is speaking falsehood and the act of the petitioner is not connected to his official duty, therefore, prior sanction as required under Section 197(1) Cr.P.C. is not necessary.

4. The relevant facts of the complaint made by the 2nd respondent – II Additional Judicial Magistrate, Tanuku, West Godavari District, are that basing on the complaint made by Lakshmi Shyamala a case in crime No.20 of 2007 for the offence under Section 498-A read with Section 34 I.P.C. has been registered. The petitioner worked as Sub-Inspector of Police, Penumantra. During the said period, he was also in-charge of Penugonda Police Station.

5. The allegations in the complaint are that during the course of investigation, the petitioner examined two material witnesses on 25.2.2007, made a remand report as if at 3.30 PM on 24.2.2007 he arrested A2 to A4 at bus stand, Penugonda and produced them before the Executive Magistrate, Penugonda, for remand on 25.2.2007.

6. It is further alleged that in the charge-sheet the petitioner herein has noted that A1 and A5 got surrendered before the Court on 28.2.2007 and he arrested A2 to A4 at 3.30 PM at Penugonda bus stop.

7. The complainant Shyamala was examined as P.W.1. The petitioner himself was examined as P.W.7. In chief-examination the petitioner/P.W.7 deposed that after he took up investigation, visited Bangalore, and examined Stalin - P.W.8. It is further deposed that on 24.2.2007 at 3.30 PM he arrested A2 to A4 at Penugonda bus stop and remanded them to the judicial custody.

8. During the course of cross-examination, petitioner/P.W.7 contended that he went to Bangalore on 22.2.2007 by Karnataka

express and returned to Penugonda by 23.2.2007. In his cross-examination he further contended that he did not visit any Police Station at Bangalore, more particularly the police station within which jurisdiction the house of the accused was situated. When he was confronted with Ex.D1 - GD entry of Yelhanki Town Police Station, Bangalore, he admitted the contents therein as if on 22.2.2007 at 18.30 hours he reported to Yelhanki Town Police Station for arrest of the accused in crime No.20 of 2007 i.e., in C.C. No.155 of 2007 with the assistance of two Constables and one woman Head Constable and P.Cs. were also present along with him when he visited the said Police Station. The GD entry in Ex.D1 further shows that P.W.7 secured presence of A1 to A4 in crime No.20 of 2007 of Penugonda Police Station and in his chief examination he deposed that as if he arrested A2 to A4 at 3.30 PM on 24.2.2007 at Penugonda bus stop which was false. Further, he made false averment in the charge-sheet that on 28.2.2007, A1 voluntarily surrendered before the Court.

9. It is further alleged that in C.C. No.155 of 2007 at paras 19 and 20 the II Additional Judicial First Class Magistrate, Tanuku found laches on the part of the Investigating Officer/petitioner.

10. Therefore, it is alleged in the complaint that the petitioner/P.W.7 though well aware of the fact that he has arrested A2 to A4 at 3.30 PM on 22.2.2007 itself, by suppressing the said fact, he made remand report as if he has arrested A2 to A4 on 24.2.2007 at Penugonda Bus Station.

11. Finally, the complainant alleged that the evidence of the petitioner/P.W.7 in C.C. No.155 of 2007 coupled with the remand report, arrest cards of A2 to A4 and charge-sheet categorically suggested that the petitioner/accused/P.W.7 had committed the offence punishable under Sections 420, 465, 468 and 471 I.P.C.

12. In the case of *Amal Kumar Jha Vs. State of Chattisgarh* (AIR 2016 SC 2082) the Apex Court held that it is apparent from the facts of the instant case that the allegation against the appellant is of omission in discharge of official duty in not providing Government vehicle for shifting the patient from Primary Health Centre to District Hospital, Raigad; whereas he himself travelled in the vehicle in question for attending the monthly official meeting at the District Headquarters. In our considered opinion, it was an act or omission in discharge of the official duty. The sanction to prosecute was necessary. In this case, the accused was acting in discharge of his official duty when he refused to provide the official vehicle. The refusal is directly and reasonably connected with his official duty, thus sanction is required for prosecution as provided under section 197(1) Cr.P.C. It is not disputed that no ambulance was provided to the Primary Health Centre. The question arises whether omission to provide the official jeep which was not meant for patients, would constitute an omission in discharge of his duty.

13. Though public servant is not entitled to indulge in criminal activities in the course of his duty, but the act in question had relation

to discharge of official duty of the accused. It was clearly connected to the performance of his official duty. When such is the case, sanction is required. Thus, he could not have been prosecuted without sanction.

14. In the case of *Shreekantiah Ramayya Munipalli Vs. The State of Bombay* (AIR 1955 SC 287), the Apex Court observed as follows :

"Now it is obvious that if section 197 of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning. What it says is –

"when any public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty....." We have therefore first to concentrate on the word 'offence'".

15. Whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it.

16. It is also settled law that 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 narrow as well as a wide interpretation. It is not every offence committed by the public servant while engaged in the performance of his official duty, which is entitled to the protection of the Section 197(1) of Cr.P.C., an act constituting an offence directly and reasonably connected with his official duty will require sanction for prosecution.

17. Use of the expression, 'official duty' implies that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. The Section 197 to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty, then it must be given liberal and wide construction so far its official nature is concerned. To attract the provision under Section 197 Cr.P.C. there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. 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, which 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 under Section 197 Cr.P.C. 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.

18. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty.

19. A public servant can only be said to act or to 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. The material on record read with the evidence of the petitioner/accused as P.W.7 no doubt goes to suggest that P.W.7 while working as S.I. of Police, Penumantra Police Station, was in charge of Penugonda Police Station. During the course of

investigation in crime No.20 of 2007 basing on the complaint of P.W.1 Lakshmi Shyamala for the offence under Section 498-A read with Section 34 I.P.C. evidently in the evidence in chief, in the remand report and charge sheet the petitioner shows that he has arrested A2 to A4 at 3.30 PM on 24.2.2007 at Penugonda bus stop and he has produced them before the Executive Magistrate on 25.2.2007 and they were remanded. It is also alleged that A1 and A5 surrendered before the Court on 28.2.2007, but whereas in the complaint as well as in the judgment the complainant specifically averred that on 24.2.2007 the petitioner arrested A2 to A4 at Penugonda bus stand and produced before the Executive Magistrate for remand. A1 and A5 surrendered before the Court on 28.2.2007.

20. It is also the evidence of P.W.7 that during the investigation he visited Bangalore, examined Stalin – P.W.8 and Raghu and arrested A2 to A4 on 24.2.2007 at 3.30 PM at Penugonda bus stop and sent them for remand. In cross-examination he stated that on 22.2.2007 he went to Bangalore by Karnataka express, examined P.W.8 - Stalin on 22.2.2007, he left Bangalore and returned to Penugonda by 23.2.2007. During the cross-examination the petitioner/accused as P.W.7 admitted that on 22.2.2007 at 6.30 PM he reported to Yelhanki Town Police Station for arrest of the accused in crime No.20 of 2007 of Penugonda Police Station and that he also obtained the assistance of two constable i.e., P.C. Nos.9290 and 3655 and as seen from Ex.D1, he even obtained assistance of woman Head

constable bearing No.203 and P.C. 239 and P.C. 976 and also admitted Ex.D1 - GD entry. As per Ex.D1 at 6.50 PM on 22.2.2007 with the assistance of P.C. 9290, P.C. 3655 and WHC 230 and other P.Cs. he secured the presence of A1 to A4 in crime No.20 of 2007 of Penugonda to Yelhanki Town Station and making an entry there he brought them to the station and further admitted whatever he deposed in chief-examination that on 24.2.2007 at 3.30 PM at Penugonda bus stand he arrested accused is incorrect and he made a false endorsement in the charge-sheet as if he arrested A2 to A4 on 24.2.2007 at 3.30 PM at Penugonda bus stand and on 28.2.2007 A1 voluntarily surrendered before the Court, though he knew that he illegally detained A1 to A4 and later produced them before Mandal Executive Officer on 25.2.2007 at 12.35 PM showing as if he arrested them at 3.30 PM on 24.2.2007 at Penugonda bus stand.

21. The trial Court ultimately found that apparently the allegations are vague in nature in the said case and observed that it is an undisputed preposition of law the doctrine *falsus in uno is falsus in omni* is not applicable in India. When the evidence of P.W.7 P.P.Srinivas is restricted to the aspect of examination of P.W.8 - Stalin, arrest of accused and filing of the charge-sheet and when such part of the evidence was found to be false in nature, then, naturally the entire evidence of P.W.7 P.P.Srinivas has to be deemed to be false. No credence can be given to his evidence at all. As the petitioner/P.W.7 P.P.Srinivas had fabricated the record, tendered false evidence before

the court and as he made an attempt to play foul game against the court, it is a fit case where a direction can be given to the superior officers of Police Department to take necessary disciplinary action against such an erring officer. That apart, such an officer should not be allowed to left scot-free. It is a fit case where proceedings should be initiated against such an erring police officer/P.W.7 P.P.Srinivas for fabrication of record and for tendering false evidence. Accordingly, submitted the private complaint.

22. The above facts clearly shows that basing on the evidence of P.W.7, the material on record i.e., remand report, arrest record, charge-sheet, the trial Court came to the conclusion that the petitioner/accused/P.W.7 has not only fabricated the record, but also gave false evidence before the Court for which he is liable to be prosecuted. Accordingly, gave a complaint.

23. In the case of **Chandra Prakash Pareek Vs. State of Rajasthan and Ors.** the High Court of Rajasthan (Jodhpur Bench) by judgment dated 6.7.2017 in S.B. Criminal Misc.(Pet.) No.3018 of 2016 held that the extra-ordinary jurisdiction conferred on this Court under Section 482 Cr.P.C. is in the nature of inherent powers and such power can be exercised to prevent abuse of the process of any Court or to otherwise secure the ends of justice.

24. In the case of **S.K.Viswambaran Vs. E.Koyakunju and Ors.** ((1987) 2 SCC 109) the Supreme Court had an occasion to examine adverse remarks against an individual in violation of rule of

natural justice. The Court, while recognizing principles of natural justice as great humanizing principles, clarified that in making adverse remarks against an authority or a person, rule of natural justice shall be strictly followed. Even assuming for argument's sake that for expunging the remarks against respondents 2 and 3 the conduct of the appellant required scrutiny and merited adverse comment, the principles of natural justice required the High Court to have issued notice to the appellant and heard him before passing adverse remarks against him if it was considered necessary. Therefore, ultimately held that the High Court has misdirected itself in its consideration of petitions filed by respondents 2 and 3 to seek expunction of the adverse remarks made against them by the Sessions Judge and failed to render elementary justice to the appellant.

25. Similarly, in the instant case the learned Magistrate gave complaint in C.C. No.866 of 2010 observing that the petitioner/P.W.7/P.P.Srinivas had fabricated the record, tendered false evidence before the court and as he made an attempt to play foul game against the court, it is a fit case where a direction can be given to the superior officers of Police Department to take necessary disciplinary action against such an erring officer. That apart, such an officer should not be allowed to left scot-free. It is a fit case where proceedings should be initiated against such an erring police officer/P.W.7 P.P.Srinivas for fabrication of record and for tendering false evidence

and gave complaint for the acts which he did while discharging official duty without complying the provision of Section 197 Cr.P.C.

26. As already discussed above, the question is, “Whether the petitioner/accused acted as a public servant while discharging of his official duty?”.

27. Admittedly, the petitioner/accused/P.W.7 while in-charge of Penugonda Police Station, took up investigation, went to Bangalore to arrest the accused in crime No.20 of 2007 and according to the finding in C.C. No.155 of 2007, he fabricated the arrest card, remand report and charge-sheet and gave false evidence. Whatever the petitioner acted is admittedly while discharging his official duties within the scope of ‘official duty’. No doubt, he exceeded his duties, but the same negligent act is in discharge of official duty during the course of investigation. He obtained passport, went to Bangalore, examined P.W.8 and another, secured A1 to A4 on 22.2.2007, returned to Penugonda on 23.2.2007, shown as if they were arrested on 24.2.2007 at Penugonda bus stop, which may be an error, but that is while discharge of his official duty without any ulterior motive or intention to cause prejudice to the accused in C.C. No.155 of 2007. The act done by the petitioner established that act purported to be done in execution of his official duty without any ulterior motive or intention. Whatever the petitioner done is while discharging his official duties, the only difference is exceeding his official duty. It was an act done in discharge of his official duty. The preparation of

remand report, arrest card and filing of charge-sheet and giving evidence is part of an official duty, but not with an intention to commit any offence. He has done the said act while discharging his official duty. Since it is established that the act of the petitioner/accused was done while discharging his official duty, it should be construed so as to advance the objective of the section in favour of the petitioner. Otherwise, the entire purpose of affording protection to a public servant without sanction shall stand frustrated. Therefore, the acts conducted by the petitioner as a public servant while discharge of his duties as a public servant is reasonably connected with the discharge of his official duty. Though the act of the accused exceeds what strictly necessary for the discharge of duty, it must be held to be official duty to which applicability of Section 197 of the Code cannot be disputed.

28. In the light of the facts and circumstances discussed above, I am of the considered opinion that the disparaging observations made against the petitioner by the II Additional Judicial I Class Magistrate, Tanuku in the complaint in C.C. No.866 of 2010 without issuing any show cause notice and giving opportunity to the petitioner to explain by following the principles of natural justice is a mitigating factor which has persuaded this Court to interfere in the matter by exercising inherent powers to prevent abuse of the process of the Court or otherwise to secure ends of justice. Thus, applying the principle embodied in Section 482 Cr.P.C. founded upon the maxim *Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non*

potest, i.e., when the law gives anything to anyone, it also gives all those things without which the things itself would be unavailable, in the present case, impugned directions and demeaning remarks/strictures against the petitioner merit annulment. Therefore, the acts complained against the petitioner/P.W.7 due to which offence is said to have been committed was intrinsically connected with discharge of official duty of the petitioner, as such the protection under Section 197 Cr.P.C. from prosecution without sanction of the competent authority, is available to the petitioner. Thus, he could not have been prosecuted without sanction. It would be for the competent authority to consider the question of grant of sanction in accordance with law. In case sanction is granted only then the petitioner can be prosecuted and not otherwise.

29. Resultantly, the impugned proceedings against the petitioner/accused in C.C. No.866 of 2010 pending on the file of the II Additional Judicial First Class Magistrate, Eluru, West Godavari District, are set aside and the Criminal Petition is allowed.

30. Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

30th October, 2018

skmr