

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc.No.M-20790 of 2017 (O&M)

Date of decision : 14.05.2018

Ranbir Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Vikram Satpal Anand, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

RAJ SHEKHAR ATTRI, J.(Oral)

The petitioner has preferred the instant petition under Section 482 Cr.P.C. for quashing of criminal complaint No.28 dated 23.07.2015, under Sections 420, 467, 468, 471, 120-B, 323, 325, 341, 427, 447, 217, 218, 166 IPC titled as Bilu Singh vs. Nazar Singh and others, pending in the court of Judicial Magistrate Ist Class, Budhlada and summoning order dated 05.09.2016, vide which the petitioner and others have been summoned under Sections 420, 467, 468, 471, read with Section 120-B IPC and Sections 323, 427, 447, 217, 218 and 166 IPC, and all other proceedings emanating thereof.

Briefly stated, it is a case of the complainant Bilu Singh that there was a land dispute between him and his brother Nazar Singh. Said Nazar Singh with an intent to usurp the land of complainant, in connivance with Ujagar Singh, Revenue Patwari and Jagdish Singh, Kanungo, eliminated the name of the complainant from the record of rights in

Jamabandi for the year 1988-89. It was wrongly mentioned that Nazar Singh alone is the owner to the extent of ½ share in the land in dispute. It is asserted that the said entry was made by Revenue Patwari Ujagar Singh and Kanungo Jagdish Singh. Therefore, the complainant filed a civil suit. It has been further submitted that Nazar Singh and his other family members in connivance with petitioner Ranbir Singh, who was posted as SHO, Police Station, Boha, had forcibly cultivated the land of complainant on 25.11.2014 at about 1:30 p.m. Therefore, the complainant submitted a complaint before the police which was marked to petitioner Ranbir Singh but he did not take any action thereon. Rather, he put the complainant in illegal police custody for the whole day. The complainant was also given beatings with sticks in the police station. The petitioner administered liquor to complainant and tortured him and also caused a fracture on his leg. However, with the intervention of the respectables of the village, he was released on the next day. The complainant got himself admitted in hospital where he was medico legally examined. He filed an application to the police but no FIR was registered. Ultimately, he preferred a criminal complaint (Annexure P-1).

After conducting preliminary inquiry, learned Magistrate ordered to summon the petitioner for the offences under Sections 420, 467, 468, 471 read with Section 120-B IPC and Sections 323, 427, 447, 217, 218 and 166 IPC.

I have heard learned counsel for the parties and have gone through the record.

Learned counsel for the petitioner has vehemently contended that the petitioner was a public servant and he acted while discharging

official duties, therefore, he protected under the provisions of Section 197 Cr.P.C. but no sanction has been sought nor accorded by any competent authority. Therefore, prosecution of the petitioner including summoning order is bad in the eyes of law and is liable to be quashed. He has further submitted that allegations levelled against the petitioner are false and concocted and are also liable to be set aside.

He placed reliance on the judgment of Hon'ble Supreme Court in *S.K.Zutshi & another vs. Bimal Debnath and another 2004 (3) RCR (Criminal) 813* and also the judgment of this Court in *Dr. Sumitra Devi vs. Manjit Singh Ahlawat and others 2007 (4) RCR (Criminal) 1.*

On the other hand, learned State counsel has submitted that beating a person by keeping him in illegal custody is not a part of the duty of a police.

This Court has given thoughtful consideration to the rival contentions.

The moot question which arises for determination is as to whether the petitioner is protected under Section 197 Cr.P.C. ? If yes, whether the complaint (Annexure P-1) is liable to be quashed on this ground ?

The object of the section is to enable public servants to perform their duties fearlessly by protecting them from vexatious, 'mala fide' or false prosecutions for acts done in the performance of their duties. In order to ensure this fearless performance of their duties, the law provides that acts done by them in the course of performance of their duties should not be the subject of prosecution until a superior authority after due consideration is of opinion that the acts may constitute an offence and

sanction such prosecution. What the court has to see is whether it can take cognizance of the case without previous sanction and for this purpose, the court has to find out if the act complained against is committed by the accused while acting or purporting to act in the discharge of his official duties.

The section is not intended to put a wall around public servants so as to protect them from prosecution for criminal offence committed by them. That obviously could not be the object of the section or intention of the legislature.

Before this section may be invoked, the following conditions must be satisfied:

- (i) the person accused of an offence is or was a public servant.
- (ii) the person accused of an offence must be a person removable from his office only with the sanction of the state government or of the Central Government according to whether the person is employed in connection with the affairs of the state or of the Central Government;
- (iii) the person must be accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties;
- (iv) the person accused of an offence is or was employed, at the time of commission of the alleged offence, in connection with the affairs of the Union or the State, as the case may be.”

Section 197 Cr.P.C. 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' make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. 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 the discharge of his official 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 act" or "official duty" means an act or duty done by an officer in his official capacity. ***In B. Saha v. M.S. Kocha, 1979(4) SCC 177 it was held***

"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."

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 the public service and 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 ***Bakhish Singh Brar v. Gurmej Kaur, 1988(1) RCR(Criminal) 35 : 1987(4) SCC 663, HON'BLE SUPREME COURT*** while emphasising on the balance between protection to the officers and the protection to the citizens observed as follows :-

"It is necessary to protect the public servants in the discharge of their duties.... In the facts and circumstances 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 as 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 (sic 197) 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 emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence."

The protection given under Section 197 Criminal Procedure Code 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 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 it chooses 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 from 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 Criminal Procedure Code 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 capacity. 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.

In this case, the only allegation against the petitioner is that he illegally detained the complainant in the police custody and gave him beatings.

There is nothing on record if the petitioner was performing his official duties. Nothing produced on record if he arrested the complainant in due course of law.

Beating a person is not a part of the duty of a police officer. The evidence is to be adduced by both the parties before the trial court, therefore, at this stage, it cannot be inferred. Thus, the petitioner was acting while performing his official duty. To the mind of this court, the present petition cannot be quashed solely on the ground that Section 197 Cr.P.C. has not been accorded by competent authority. Infact, the petitioner is not entitled for the protection with regard to beating of a person under his custody.

The Hon'ble Supreme Court in **State of Haryana and others versus Ch. Bhajan Lal Ors.** has made the following observations:-

“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 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. Whether 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 F.I.R. 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. Whether, 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 F.I.R. 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.”*

This petition is without any merit and the same is dismissed.

However, the petitioner is not debarred to substantiate this plea before the trial court.

14.05.2018
mamta-M

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No