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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 03rd December, 2018

+ CRL.M.C. 4041/2015 and Crl. M.A. 14375/2015

MAHAVIR SINGH

..... Petitioner

Through: Mr. Mudit Jain, Mr. Deepanshu Choithani and Mr. Shailesh Pandey, Advocates with petitioner in person

versus

STATE & ORS

..... Respondents

Through: Mr. Kewal Singh Ahuja, APP for the State with SI Vipin Kumar

Mr. Vikas Arora and Ms. Radhika Arora, Advocates for R-2 & 3 with R-2 & 3 in person

Mr. Anupam S. Sharma and Mr. Prakarsh Airan, Advocates for R-4 & 5

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner, a resident of Trilokpuri, had lodged a criminal complaint (CC no.136/13) in the court of the Chief Metropolitan Magistrate (CMM) of East District on 12.11.2013, making allegations against the second to fifth respondents herein accusing them to have committed certain acts of commission or omission constituting

offences punishable under Sections 166, 211, 354-A, 354D, 452, 506, 324, 308, 34 of Indian Penal Code, 1860 (IPC), the incident alleged to have occurred sometime after 10.30 p.m. on 31.10.2013. Concededly, all the said respondents were, and are, members of Delhi Police, the first two holding the rank of constables and the remaining holding the rank of Sub Inspector at the relevant point of time, each of them posted in the police station Kalyan Puri within whose jurisdiction the house of the petitioner is situate.

2. Alongwith the said criminal complaint presented by invoking the jurisdiction of the CMM under Section 200 of the Code of Criminal Procedure, 1973 (Cr. PC), a prayer was made for direction for investigation by the police under Section 156(3) Cr. PC. The CMM called for a status report which revealed that on the complaint of the second respondent, first information report (FIR) (no.643/2013) had been registered at 02:10 hours of 01.11.2013 by the police station Kalyan Puri involving offences punishable under Sections 186, 353, 332, 356, 34 IPC respecting the incident that had occurred sometime around 11.00 p.m. on 31.10.2013, indicating complicity of the petitioner, his sons Bablu and Dinesh @ Rahul and his daughter Savita, besides certain others.

3. The CMM declined to give a direction to the police for investigation, but held an inquiry under Sections 200, 202 Cr. PC. On the basis of the evidence that was led in the said pre-summoning inquiry, by his order dated 25.02.2015, the CMM found grounds to proceed against all the aforementioned respondents for offences under

Sections 166, 452, 506, 323, 34 IPC and against second and third respondents herein for offences under Section 354 A / 34 IPC.

4. The order dated 25.02.2015 of the CMM was challenged by the petitioners in the court of Sessions through criminal revision petition (nos.19-20/2015). The said court held that the summoning order was bad in law primarily for the reason that the petitioners were entitled to the protection of pre-requisite of sanction under Section 197 Cr. PC. The petitions were thus allowed on 10.08.2015 and the impugned order of the CMM was set aside.

5. It is the aforementioned order dated 10.08.2015 of the revisional court which has been assailed by the petitioner at hand invoking the inherent powers and jurisdiction of this court under Section 482 Cr. PC read with Article 226 and 227 of the Constitution of India. The short issue that arises is as to whether the provision contained in Section 197 Cr. PC can come in the way of the petitioner in the present case in prosecuting his criminal complaint further in the absence of sanction.

6. The petition is resisted by all the respondents, including the State. A status report was submitted by the SHO, police station Kalyan Puri setting out the background facts as per the police record. The respondents have also filed their respective replies and alongwith the same, documents relating to the corresponding State case arising out of FIR no.643/2013 have been submitted, they having formed earlier the basis of the report which was submitted before the CMM at the time of consideration of the prayer under Section 156(3) Cr. PC.

7. The chronology of events, as forming the basis of the criminal case arising out of FIR no.643/2013 and the official records in the nature of daily diary entries and medico legal reports cannot be shut out from being taken into consideration. After all, for purpose of scrutiny of the prayer under Section 156(3) Cr. PC, as indeed to satisfy himself that the restriction under Section 210 Cr. PC was not coming in the way of inquiry into the private complaint of the petitioner, on account of pendency of the investigation into the said FIR, the court of the CMM was duty bound and would have looked into such material at the appropriate stages of inquiry leading to the summoning order being passed.

8. The copy of DD no.50-B recorded at 4.20 PM dated 31.10.2013 in police station Kalyan Puri clearly shows and there is no contest thereto by the petitioner, that the second and third respondents, members of the constabulary attached to police station Kalyan Puri, had set out for patrolling duty in the area in question. This is how their presence at the relevant point of time on the scene of incident is indicated not only in the FIR but also in the criminal complaint case of the petitioner. Further, DD entry no.59A which was recorded at 11.15 p.m. on 31.10.2013 based on telephonic information received from an unknown caller indicates that the initial input was that a quarrel had taken place involving two police officials and pursuant to this, the fourth and fifth respondents, attached to the police station Kalyan Puri, and on duty, were deputed to proceed to the place and make inquiries. In the face of such unimpeachable material, there can be no denial of the fact that the second to fifth respondents, members of Delhi Police,

were on official duty at the place where the complainant alleges offences to have been committed by them.

9. As per the FIR, during their patrolling duty the second and third respondents had intercepted Bablu, son of the petitioner, alongwith two other persons, at a public place near Mother Dairy Booth, sometime around 11.00 p.m. on 31.10.2013, indulging in drinking liquor and creating ruckus. The two police officials statdly stopped their motorcycle and questioned the three young persons, they having been identified as Bablu, son of the petitioner, Ravi, son of Nanhe and Bunty, son of Shri Chand. It is alleged that Bablu, son of the petitioner, objected and physically assaulted the second respondent (the first informant of the case) and got one of the boys apprehended by him forcibly relieved. The police officials then started taking Bablu to the police station. But, the petitioner, accompanied by his other son Dinesh @ Rahul, and daughter Savita, came on the scene and blocked their way and made efforts to rescue Bablu, assaulting the police officials in the process. It is alleged that the petitioner tore the uniform of the second respondent while his son Dinesh caused injuries on his face, the daughter of the petitioner having snatched his firearm (pistol) from the holster which got broken. The FIR stated that the third respondent was also assaulted and thrown on the ground. Meanwhile, the other police officials came on the scene and Bablu and the petitioner, besides the two boys Bunty and Ravi, were apprehended, the other son and daughter having run away from the scene.

10. A copy of the MLC of Ravi recorded at 4:55 a.m. on 01.11.2013 in Lal Bahadur Shastri Hospital, Khichripur, shows that he was smelling of alcohol. The copies of MLCs of second and third respondents recorded in the same hospital at 11:45 p.m. and 11:59 p.m. on 31.10.2013 indicate they having suffered abrasions (simple injuries), there being no indication of any alcohol consumption.

11. The investigation into the aforementioned FIR has already been completed and a charge-sheet has already been presented on which cognizance has been taken and the petitioner alongwith others, including his said son and daughter, have been summoned as accused, the question of charge being yet to be considered, the prime allegations against them being that they had obstructed the second and third respondents in the discharge of their official duty and having assaulted on their person to deter them from doing so, thereby causing injuries to them, the daughter of the petitioner having even snatched the official firearm from the second respondent, this also having led to a scuffle.

12. In the criminal complaint, the petitioner alleged that the second and third respondents were patrolling in the area (in a drunken condition) and had stopped his son Bablu who was out taking a stroll after his meal, it being the reason behind his presence. The petitioner states that he is employed as a Reader in the court of Sessions at Karkardooma Court Complex and that he has been scrupulous in performing his duties, not permitting any unauthorized inspection of the judicial files by the police personnel, which is to the annoyance of the police officials. He alleged that one of the two constables had

identified his son as the person who was in the habit of making reports to the police against bootleggers, junkies, drug addicts and vagabonds and this was also not liked by the police since it concerned their “*weekly ransom*”. He alleges that for this reason, his son was slapped by the two constables and when he escaped from their clutches and ran towards his house, the respondents had chased him, entering into his house where he (the petitioner) was also identified from his position in the court and was consequently given a beating without provocation. He would allege that his wife and daughter were dragged outside in the most derogatory and inhuman manner, the daughter having been inappropriately touched and assaulted.

13. During the pre-summoning inquiry, the petitioner had examined, besides himself, six other witnesses, they including his daughter (Sunita) as CW-2, his son (Bablu) as CW-3, two doctors namely Dr. Sachin Harit as CW-6 and Dr. Ranjeetesh Kumar as CW-7, besides two police officials, the medical evidence would show injuries having been suffered by the petitioner. The CMM was conscious that the issue of sanction under Section 197 Cr. PC was required to be considered. He, however, referred to a decision of this court reported as *Jinender Singh vs. State, 1997 (3) RCR (Criminal) 691*, and observed that the acts of commission or omission attributed to the respondents were “*beyond discharge of their official duties*” and consequently, the protection of Section 197 Cr. PC was not available to them.

14. The Additional Sessions Judge, on the other hand, held that the protection under Section 197 Cr. PC could not be denied and observed

that since the acts of commission or omission attributed to them pertain to the events that occurred during the discharge of their official duties, no part being segregatable, the prosecution on complaint could not proceed without prior sanction under Section 197 Cr. PC. In taking his view, reliance was placed on the decision of the Supreme Court in *Crl. Appeal No.722/2015*, titled *D.T. Virupakshappa vs. C. Subash*, decided on 27.04.2015.

15. It is clear from the above summary of the background facts forming the two contrary versions that it cannot be disputed that the respondents were acting or purporting to act in discharge of their official duties at the relevant point of time within the meaning of Section 197 Cr. PC. In *Om Prakash and Ors. Vs. State of Jharkhand*, , (2012) 12 SCC 72, the Supreme Court had observed thus :-

“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. At this point, in order to exclude the possibility of any misunderstanding, we

make it clear that the legal discussion on the requirement of sanction at the very threshold is based on the finding in the earlier part of the judgment that the present is not a case where the police may be held guilty of killing Munna Singh in cold blood in a fake encounter. In a case where on facts it may appear to the court that a person was killed by the police in a stage-managed encounter, the position may be completely different.

42. It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial. This Court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognised as legal by our criminal justice administration system. They amount to State-sponsored terrorism. But, one cannot be oblivious of the fact that there are cases where the police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact. In such circumstances, while the police have to do their legal duty of arresting the criminals, they have also to protect themselves. The requirement of sanction to prosecute affords protection to the policemen, who are sometimes required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. Sanction must be a precondition to their prosecution. It affords necessary protection to such police personnel. The plea regarding sanction can be raised at the inception.”

16. In similar backdrop of allegations of police excess in a judgment reported as *State of Orissa through Kumar Raghvendra Singh and Ors. vs. Ganesh Chandra Jew*, (2004) 8 SCC 40, the Supreme had ruled thus :-

“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. 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. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.”

17. In *Om Parkash* (supra), the guidelines were set out thus :-

“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 [AIR 1960 SC 266 : 1960 Cri LJ 410 : (1960) 2 SCR 89]). 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 [(2004) 8 SCC 40 : 2004 SCC (Cri) 2104]). 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.”

(emphasis supplied)

18. A similar view has been taken in a plethora of decisions of the Supreme Court and reference may be made in this regard to *Gauri Shankar Prasad vs. State of Bihar and Anr.*, AIR 2000 SC 3517, *Abdul Wahab Ansari vs. State of Bihar and Anr.*, AIR 2000 SC 3187 and *Sankaran Moitra vs. Sadhna Das and Anr.*, AIR 2006 SC 1599.

19. After taking note of the ruling of the Constitution Bench of the Supreme Court in *Matajog Dubey Vs. H.C. Bhari*, AIR 1956 SC 44 on the subject of sanction under Section 197 Cr. PC against a public servant accused of an offence purporting to act in the “discharge of his official duty”, as well as of other cases namely *Centre for Public Interest Litigation vs. Union of India*, (2005) 8 SCC 202; *Kalicharan Mahapatra vs. State of Orissa*, (1998) 6 SCC 411 and *Lalu Prasad vs. State of Bihar*, (2007) 1 SCC 49, this court in *State Vs. Mukesh Kumar Singh and Anr.*, (2018) SCCOnline Del 8136 held as under :-

“120. From the above, it can be concluded that

there can be no thumb rule that in a prosecution before the court of Special Judge, the previous sanction under Section 19 of the POC Act would invariably be the only pre-requisite. If the offences on the charge of which the public servant is expected to be put on trial include offences other than those punishable under the POC Act, that is to say under the general law (i.e. penal code), the court is bound to examine, at the time of cognizance and also, if necessary, at subsequent stages (as the case progresses) as to whether there is a necessity of sanction under Section 197 Cr. PC. There is a material difference between the statutory requirements of Section 19 of the POC Act, on one hand, and Section 197 Cr. PC, on the other. In prosecution for offences exclusively under the POC Act, the sanction is necessary qua the public servant. In cases under the general penal law against the public servant, the necessity (or otherwise) of sanction under Section 197 Cr. PC depends on the factual aspects. The test in the latter case is of the “nexus” between the act of commission or omission and the official duty of the public servant. To commit an offence punishable under law can never be part of the official duty of a public servant. It is too simplistic an approach to adopt and to reject the necessity of sanction under Section 197 Cr. PC on such reasoning. The “safe and sure test”, as laid down in the case of Centre for Public Interest Litigation (supra), is to find if the omission or neglect to commit the act complained of would have made the public servant answerable for charge of dereliction of his official duty. He may have acted “in excess of his duty”, but if there is a “reasonable connection” between the impugned act and the performance of the official duty, the protective umbrella of Section 197 Cr. PC cannot be denied, so long as the discharge of official duty is not used as a cloak for illicit acts.”

(emphasis supplied)

20. A Constitution Bench of the Supreme Court in *Matajog Dubey* (*supra*) had observed thus :-

“23. Where a power is conferred or a duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution. If in the exercise of the power or the performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance. This accords with commonsense and does not seem contrary to any principle of law. The true position is neatly stated thus in Broom's Legal Maxims, 10th Edn. at p. 312: “It is a rule that when the law commands a thing to be done, it authorises the performance of whatever may be necessary for executing its command.”

25. Reading the complaints alone in these two cases, even without the details of facts as narrated by the witnesses at the judicial inquiries, it is fairly clear that the assault and use of criminal force etc. alleged against the accused are definitely related to the performance of their official duties. But taken along with them, it seems to us to be an obvious case for sanction. The injuries — a couple of abrasions and a swelling on Nandram Agarwala and two ecchymosis on Matajog — indicate nothing more than a scuffle which is likely to have ensued when there were angry protests against the search and a pushing aside of the protestors so that the search may go on unimpeded.”

21. The CMM in his order dated 25.02.2015 referred to a decision of this court in *Jinender Singh* (supra), but then took note only of a head-note from the law report which was not the correct way of understanding the *ratio* or import of the law thereby declared. This seems to have led to his approach being mis-directed. The said decision does not say anything contrary to what has been the consistent view of the Supreme Court in the above quoted decisions.

22. Thus, this court accepts and affirms the view taken by the revisional court in the order dated 10.08.2015 to the effect that the petitioner cannot prosecute the second to fifth respondents without a prior sanction under Section 197 Cr. PC.

23. The petition and the application filed therewith are dismissed.

R.K.GAUBA, J.

DECEMBER 03, 2018

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