

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.2433 of 2019Order reserved on: 26-11-2019Order delivered on: 17-12-2019

Vijendra Kumar, S/o Sanatram Sardul, aged about 27 years, R/o School Para, Girola, Junior Engineer Incharge Officer, Chhattisgarh Electricity Department, Kondagaon, Police Station & District Kondagaon (C.G.)

---- Petitioner

Versus

State of Chhattisgarh, through the District Magistrate, Kondagaon, District Kondagaon (Station House Officer, Police Station Kondagaon, District Kondagaon) (C.G.)

---- Respondent

For Petitioner: Mr. D.N. Prajapati, Advocate.

For Respondent / State: -

Mr. Rahul Jha, Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The petitioner is an accused standing trial for offence under Sections 304-A and 337 of the IPC. He is working as Junior Engineer in Chhattisgarh State Power Distribution Company Limited (CSPDCL). The aforesaid case has been registered against him on the ground that he acted rashly and negligently in performance of his legal duty while directing Negi Poyam and Goverdhan Thakur to climb over the electric pole in which electric current of 415 Volts and 11,000 Volts was already running by which Negi Poyam died and Goverdhan Thakur suffered injuries. In the said case, the petitioner filed an application under Section 197 of the CrPC which was rejected by the trial Court and also by the learned Sessions Judge, Kondagaon against which this petition under Section 482 of the CrPC has been

preferred.

2. Mr. D.N. Prajapati, learned counsel appearing for the petitioner, submits that the petitioner is a Government servant and Section 197 of the CrPC would be applicable to him and therefore no charge-sheet can be filed against him without permission of the State Government. He relied upon the decisions of the Supreme Court in the matters of **Anil Kumar and others v. M.K. Aiyappa and another**¹, **Manorama Tiwari and others v. Surendra Nath Rai**² and **L. Narayana Swami v. State of Karnataka**³ to buttress his submission.
3. Mr. Rahul Jha, learned Government Advocate, appearing for the State / respondent, would support the impugned order and would oppose the petition.
4. Admittedly, the petitioner is not a Government servant and he is working in CSPDCL, merely because, the provisions relating to a Government servant and the rules applicable to the Government servant are being applicable to him, he cannot be deemed to be a Government servant.
5. In a recent decision in the matter of **Bharat Sanchar Nigam Limited and others v. Pramod V. Sawant and another**⁴, their Lordships of the Supreme Court while taking note of the various decisions including the definition of 'public servant' as defined in Section 21 of the IPC, held as under: -

“8. At the very outset, we are of the opinion that the question for grant of sanction for prosecution under Section 197, Cr.P.C. on the ground of being a ‘public servant’ is not available to appellants nos.3 and 4 on account of their ceasing to be employees of the Indian Telecommunication Service after their absorption in the appellant Corporation

1 (2013) 10 SCC 705

2 (2016) 1 SCC 594

3 (2016) 9 SCC 598

4 2019 SCC OnLine SC 1049

on 01.10.2000, prior to the complaint. The fact that their past service may count for purposes of pension in case of removal or dismissal by the Corporation or that administrative approval of the concerned ministry may be formally required before any punitive action will not confer on them the status of 'public servant' under the Cr.P.C.

"16. It is therefore, held that the question of sanction under Section 197, Cr.P.C. with regard to appellants nos.3 and 4 treating them to be 'public servant' simply does not arise because of their absorption in the Corporation. With regard to appellant no.2, considering his status as on deputation to the appellant Corporation at the relevant point of time and in absence of necessary evidence with regard to his status in the appellant Corporation throughout the litigation being ambiguous, we leave that question open for consideration in the trial after necessary evidence is available."

6. Admittedly, the petitioner is an employee of CSPDCL, therefore, the provisions of Section 197 of the CrPC would not be applicable to him and the two learned Courts below have rightly dismissed the application filed under Section 197 of the CrPC. The decisions relied upon by the learned counsel for the petitioner would also not be applicable to the petitioner's case. The petition being devoid of merit is liable to be and is accordingly dismissed.

Sd/-
(Sanjay K. Agrawal)
Judge