

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 141 OF 2005

Surendra Jagannath Shirsath
Age 39 yrs, Occ : Service
(presently working as API, Shivoor P.S.)
R/o, Police Colony, Shivoor,
Tq. Vaijapur, Dist. Aurangabad.

... Applicant
(Orig. Accused)

Versus

1. State of Maharashtra
(Through the Public Prosecutor,
High Court of Judicature of Mumbai,
At Aurangabad.

2. Nivruti s/o Machindra Barse
Age : 40 yrs, Occ : Agril.,
R/o Jambarkheda, Tq. Vaijapur,
Dist. Aurangabad.

... Respondents

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Mrs. Uma S. Bhosale, Advocate for the Applicant (Appointed).

Mr. V. M. Kagne, APP for Respondent No.1-State.

Mr. V. R. Dhorde, Advocate for Respondent No.2.

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**WITH
CRIMINAL WRIT PETITION NO. 239 OF 2005**

Nivrutti S/o Machindra Barse,
Age : 40 years, Occ : Agri,
R/o Jambarkheda, Tq. Vaijapur,
Dist. Aurangabad

... Petitioner
(Orig. Complainant)

Versus

1. The State of Maharashtra
(Copy to be served on Public Prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad.)

2. Surendra J. Shirsath,
Age : 40 years, Occ : Service
as Assistant Police Inspector,
Shivoor Police Station,
Tq. Vaijapur, Dist. Aurangabad.

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Mr. V. R. Dhorde, Advocate for the Petitioner.
Mr. V. M. Kagne, APP for Respondent No.1.
Mrs. Uma S. Bhosle, Advocate for Respondent No.2.

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CORAM : V. K. JADHAV, J.
DATED : 07th MARCH, 2019

JUDGMENT

1. Being aggrieved by the order dated 05.04.2005 of issuance of process under Section 324 of IPC passed in R.C.C. No. 91 of 2005 by the Judicial Magistrate, First Class, Vaijapur, the applicant/original accused has preferred Criminal Revision Application No. 141 of 2005 and being aggrieved by the same order, the original complainant has also preferred Criminal Writ Petition No. 239 of 2005 praying therein to issue process against the respondent/original accused under Section 166 of IPC.

2. Brief facts of the case are as follows:

- a. The applicant in Criminal Revision Application, namely, Surendra Jagannath Shirsath is Assistant Police Inspector presently

working in Shivoor Police Station in Vaijapur Taluka. According to the applicant, on 09.10.2004, one Mr. Gadekar, Talathi of village Garaj, taluka Vaijapur found one tractor carrying sand illegally without royalty on the Aurangabad-Mumbai High Way. He stopped the said tractor and seized it under *panchanama* and gave possession of the same to the Police Patil of village Garaj, namely, Mr. Raghunath Tulsiram Chauhan till further orders. At 02.00 p.m., respondent no.2 in the Criminal Revision Application/original complainant, who happened to be the owner of the said tractor, accompanied by one Mr. Ramesh Banudas Ingle, went to the Police Patil and took the tractor by threatening him. Therefore, on 21.10.2004, the Police Patil lodged a complaint under Sections 379, 353, 504, 34 of IPC against the respondent/complainant and said Ramesh Ingle. On the basis of the complainant lodged by the Police Patil, crime no. 113 of 2004 came to be registered. As per directions of the Investigating Officer, on 23.10.2004, the petitioner/accused along with other Police Constables, went to arrest the respondent/complainant in connection with said crime no. 113 of 2004 but the respondent/complainant refused to surrender and threatened the police. When the applicant/accused and other constables tried to make the respondent/complainant sit

in the jeep, the respondent/complainant kicked the constable Gangawane on his chest. The respondent/complainant's wife Alkabai Nivruti Barse hit Police Constable Jangale with stone on his right hand and waist and scratched the hands of Constable Indapure with her nails. In the said incident, Alkabai also got some scratches on her body. She was initially referred to the hospital at Shivoor and then to Dr. Patne at Aurangabad. In her statement given in MLC No.0/507/04 and MLC No. 85/04 dated 23.10.2004, she admitted that she got the minor injuries in the scuffle while she was preventing the police on 23.10.2004 from arresting her husband i.e. respondent/ complainant Nivruti Barse.

b. Police Constable Jagannath Baburao Indapure filed a complaint with Shivoor Police Station against Respondent/complainant Nivrutti Barse and his wife Alkabai immediately on 23.10.2004 and crime No. 116 of 2004 came to be registered under Sections 353, 332, 34 of IPC.

c. Seven months after the incidence of 23.10.2004, the respondent/complainant Nivrutti Barse maliciously instituted a private complaint under Sections 324 and 166 of IPC against the

present applicant with an ulterior motive for wreaking vengeance on the present applicant. The said complaint came to be registered as R.C.C. No. 91 of 2005 and by the impugned order, the Judicial Magistrate, First Class, Vaijapur issued process under Section 324 of IPC against the present applicant. Hence this Criminal Revision Application.

3. Learned counsel for the applicant/accused submits that the respondent/original complainant is a habitual offender. His antecedents are not clear. There are several criminal complaints against him. He refused to surrender when the police went to arrest him in connection with crime no. 113 of 2004. He has not come to the court with clean hands and has suppressed material facts. The proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the applicant/accused. The credit and reputation of the applicant/accused is put to peril by means of this vexatious criminal litigation, which is nothing but abuse of process of law. Learned counsel submits that no offence is constituted on the face of the complaint, nor there is any evidence to support the allegations against the applicant/accused. The evidence adduced manifestly fails to prove the charge. There is nothing in the

complaint to indicate that the applicant/accused was in possession of any dangerous weapons and was likely to cause death as provided in the definition of Section 324 of IPC. It is therefore unfair to call upon the petitioner to rebut the charge for which there is no legal evidence to establish.

4. Learned counsel for the applicant further submits that the act done by the applicant was an act done by a public servant during discharge of his duty. It is mandatory to obtain sanction from the Government for prosecuting a public servant for the acts done in discharge of his official duties. Obtaining such sanction from the Government is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to the public servants against frivolous prosecution and unsubstantiated allegations. Hence, such sanction should be obtained before cognizance is taken by the Magistrate. A trial without valid sanction would be a trial without jurisdiction and would render the proceedings *ab initio void*.

5. Learned counsel for the applicant/accused, in order to substantiate her contention, places reliance on the following cases:

1. *Asif Yusuf Patel since (D) thr. LRs. vs. The State of Maharashtra & Ors.*, reported in *2017 ALL MR (Cri) 381*.
 2. *State of Orissa and Ors. vs. Ganesh Chandra Jew*, reported in *2004 Cri.L.J. 2011*.
 3. *Smt. Jancy Nelson D'Souza and Ors. vs. Nelson D'Souza and another*, reported in *2004 Cri.L.J. 1690*.
 4. *Om Prakash and Ors. vs. State of Jharkhand*, reported in *(2012) 12 SCC 72*.
6. I have also heard Learned APP. Learned APP has relied upon the case of *D.T. Virupakshappa vs. C. Subash*, reported in *2015 All MR (Cri) 2434 (S.C.)*.
7. Learned counsel for respondent no.2/complainant in the Criminal Revision Application (petitioner in Criminal Writ Petition No. 239 of 2005), on the other hand, submits that the respondent/complainant is an active political worker having good reputation. The complaint (CR No.113 of 2004) was lodged against him out of political rivalry with a view to malign his image. By taking advantage of the said complaint (CR No. 113 of 2004), the applicant/accused took the opportunity to defame and insult the respondent/complainant and to degrade his status in society. The applicant/accused being a police officer, without following the

procedure prescribed u/s 46 of Criminal Procedure Code, 1973, has arrested the respondent/complainant in rude manner and thereby committed an offence punishable under Sections 324 and 166 of IPC. Learned counsel submits that the applicant/accused is arrogant and adamant police officer and he has willfully disobeyed the powers conferred to him by law and has intentionally caused injury to the respondent/complainant and his wife when the respondent/complainant was busy volunteering for canvassing for his party. Learned counsel submits that there are sufficient grounds in the complaint filed by the respondent/complainant to prosecute the applicant/accused under Sections 166 and 324 of IPC. However, the Judicial Magistrate erroneously not issued process under Section 166 of IPC.

8. Learned counsel for respondent no.2/complainant, in order to substantiate his contention, placed reliance on the case of ***Chandan Kumar Basu vs. State of Bihar***, reported in **(2014) 13 SCC 70**.

9. Admittedly, the Police Patil of village Garaj had lodged a complaint on 21.01.2004 under the directions of the Tahsildar,

Vaijapur against the respondent/original complainant in the Criminal Revision Application for having committed an offence punishable under Sections 379, 353, 504 read with 34 of IPC. On the basis of the said complaint, crime no.113 of 2004 came to be registered against the respondent/complainant in this Criminal Revision Application. According to the applicant Surendra Jagannath Shirsath, who happened to be the API attached to Shivoor Police Station at the relevant time, he himself alongwith police constables Borade, Jangale, Aute, Jadhav, Ghusange, Gangawane and Indapure went to village Jambarkheda at the residence of the complainant in Criminal Revision Application (the accused in aforesaid crime no.113 of 2004) for effecting his arrest in connection with the said crime. However, he had refused to surrender and threatened the police. Even the other constables have tried to make the respondent (accused in crime no. 113 of 2004) to sit in the police jeep. However, he hit the constable Gangawane on his chest with leg. Even his wife Alka hit the police constable Jangale with stone on his right hand and waist and also scratched constable Indapure with her nails. Thus, the police constable Indapure lodged a complaint in Shivoor Police Station on 23.10.2004 against both of them for the offence punishable under

Sections 353, 332, 34 of IPC. On the basis of his complaint, crime no. 116 of 2004 came to be registered and after due investigation, even the charge sheet has been filed before the Judicial Magistrate First Class, Vaijapur.

10. According to the respondent/original complainant (accused in the aforesaid crime no. 113 of 2004), though he had consented to go along with the police staff, he was forcibly given jerks with the help of police stick and he was pushed outside his house. Even the police staff had threatened his wife Alka and also assaulted her. In consequence thereof, his wife Alka was admitted in the hospital. The respondent/complainant (accused in crime no. 113 of 2004) was referred for his medical examination by the Magistrate concerned before whom he was produced as accused in the said crime. He was medically examined by the concerned Medical Officer and accordingly, the respondent/complainant (accused in crime no. 113 of 2004) lodged the complaint bearing R.C.C. No.91 of 2005.

11. In terms of the provisions of Section 197 of Cr.P.C., if a public servant is the accused of any offence alleged to have been committed by him while acting or purporting to act in the

discharge of his official duty, no court shall take cognizance of such offence except with previous sanction from the proper authority. In the instant case, there is no dispute that the applicant A.P.I. Surendra Jagannath Shirsath alongwith his police staff had been to the village Jambarkheda for effecting arrest of the respondent/complainant in connection with crime no. 113 of 2014. It further appears that while effecting the said arrest, according to the applicant A.P.I. Surendra Jagannath Shirsath, the respondent/complainant tried to evade his arrest and even his wife Alka has assaulted the police. Whereas, the respondent/complainant has made the allegations that the applicant A.P.I. Surendra Jagannath Shirsath and his police staff man-handled him, pushed him outside of his house and caused injury on his abdomen with the help of police stick. It has also been alleged that even the applicant A.P.I. Surendra Jagannath Shirsath and his police staff had beaten his wife Alka and in consequence of the same, she had sustained injuries on her person. It is part of record that on the basis of the complaint lodged by constable Indapure, crime no. 116 of 2004 came to be registered against the respondent/complainant and his wife Alka for having committed the offence punishable under Sections 353, 332 r/w 34 of IPC. The

concerned police station, after registration of crime, has carried out investigation and submitted charge sheet against the respondent/complainant and his wife Alka. A copy of the charge sheet has been submitted in the connecting Writ Petition No. 239 of 2005. On perusal of the said charge sheet, I find that the police constable Jagannath Indapure had sustained two injuries on his person and police constables Suresh Gangawane and Trimbak Jangale have also sustained injuries. The medical certificates of those police constables are the part of the charge sheet. The complaint in the aforesaid crime came to be filed on 23.10.2004.

12. It is also part of record that the respondent/complainant and his wife have also sustained injuries. They were subjected to medical examination and the medical certificates to that effect are also placed on record. Even the concerned Magistrate has found the injuries on the person on respondent/complainant when he was produced before the Magistrate in connection with the said crime bearing crime no. 113 of 2004. It is also part of record that the API of Kranti Chowk Police Station, Aurangabad City has recorded the statement of wife of respondent/complainant, namely, Alka. She has stated in her statement that on 23.10.2004, the revision

applicant API Surendra Jagannath Shirsath alongwith his police staff had been to their village Jambarkheda and visited their house. The said police staff had been to their house for effecting arrest of her husband. She has further stated that when the police started taking her husband in the police jeep, she obstructed them and during that process, she was fallen down and sustained injuries.

12. In the backdrop of these admitted facts, I would like to refer the case of ***D.T. Virupakshappa vs. C. Subash*** (supra), relied upon by learned APP. The Hon'ble Supreme Court, in para 6 of the order, has referred the case of ***Om Prakash and others vs. State of Jharkhand through The Secretary, Department of Home, Ranchi and another [(2012)12 SCC 72]*** and quoted paragraph nos. 32 and 41 of the said judgment which read as under :

“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). 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). 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)

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. ...”

13. The Supreme Court while examining the issue of "police excess" during investigation and requirement of sanction for

prosecution in this regard, also referred the case of ***State of Orissa Through Kumar Raghvendra Singh and Others vs. Ganesh Chandra Jew***, reported in **(2004) 8 SCC 40** and quoted para 7 of the said case. Said para 7 read as under:

“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...”

(Emphasis supplied).

14. It is well settled that the protection under Section 197 of Cr.P.C. has certain limitations and is available only when the alleged act of the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. The Supreme Court has observed that if a police officer in doing his official duty, acts in excess of his duty but there is reasonable connection between the act and performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the said protection. In the instant case, there is no dispute that the revision applicant API Surendra Jagannath Shirsath, along with his police staff, was discharging his official duty at the material time and while effecting arrest of the respondent/complainant, some of the police constables had sustained injuries. Even on the basis of the complaint lodged by

one of those police constables, crime came to be registered in the concerned police station as against the respondent/complainant and his wife and after due investigation, the concerned police station has submitted a charge sheet against the respondent/complainant and his wife. It further appears that the respondent/complainant and his wife had exaggerated the things when the statement of respondent/complainant was recorded by the Magistrate. The injuries on the person of respondent/complainant and his wife are simple in nature.

15. Learned counsel for respondent/complainant has placed his reliance on the case of *Chandan Kumar Basu vs. State of Bihar* (supra) wherein the Supreme Court has observed that there are three mandatory requirements under Section 197, namely, (1) that the accused is a public servant, (2) that the public servant can be removed from the post by or with the sanction of the Government concerned and (3) the act(s) giving rise to the alleged offence had been committed by the public servant in actual or purported discharge of his official duties. The Supreme Court has further observed in the aforesaid case that since evidence was required to determine whether these three requirements were made out in the

present case, there is no reason to foreclose the trial for want of sanction. However, in the instant case, admittedly the applicant along with his police staff was discharging his official duties. Though there are allegations about the "in excess of the official duty", the same is reasonably connected with the act and performance of the official duty. As observed by the Supreme Court in the aforesaid two cases, the excess will not be a sufficient ground to deprive a public servant of the said protection granted under Section 197 of Cr.P.C. Thus, the impugned order issuing process against the applicant/accused for the offence punishable under Section 324 of IPC is liable to be quashed and set aside by allowing the revision application. The respondent/complainant has also preferred Criminal Writ Petition No.239 of 2005 against the order is issuance of process to the extent that the learned Magistrate has not issued process under Section 116 of IPC. However, in view of disposal of the Criminal Revision Application, nothing survives in the said Criminal Writ Petition and the same will also stand disposed of. Hence, I proceed to pass the following order:

ORDER

I. The Criminal Revision Application No. 141 of 2005 is hereby allowed.

II. The impugned order of issuance of process dated 05.04.2005 passed in R.C.C. No. 91 of 2005 pending before the Judicial Magistrate, First Class, Vaijapur, is hereby quashed and set aside.

III. The complaint vide R.C.C. No. 91 of 2005 is hereby dismissed as against the present applicant.

IV. The Criminal Revision Application No. 141 of 2005 is accordingly disposed of. Rule made absolute.

V. In view of disposal of Criminal Revision Application No. 141 of 2005, nothing survives in Criminal Writ Petition No. 239 of 2005 and the same also stands disposed of. Rule stands discharged.

VI. The High Court Legal Services Sub-Committee, Aurangabad to quantify the fees of Advocate Mrs. Uma S. Bhosale as per rules.

(V. K. JADHAV, J.)

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