

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-46600-2017 (O&M)

Date of decision : 14.11.2019

Ashok Kumar and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Dinesh Arora, Advocate for the petitioners.

Mr. Anmol Malik, AAG, Haryana.

ANIL KSHETARPAL, J.

Question which this Court is called upon to answer is “whether the police officials after having committed excesses (by brutally beating the detenues) can successfully claim protection under Section 197 of the Criminal Procedure Code (hereinafter to be referred as “the Code”)”?

Through the present petition under Section 482 Cr.P.C., correctness of the order dated 28.10.2017 passed by the learned Additional Session Judge, Faridabad, has been assailed.

Petitioners are the police officials. In this petition, learned counsel appearing for the petitioners has submitted that sanction of competent authority under Section 197 of the Code has not been sought and, therefore, the Court erred in initiating the proceedings and summoning the petitioners.

At this stage, it would be appropriate to reproduce the averments made in para 2 of the complaint filed under Sections 323, 326,

506, 166 and 34 of the Indian Penal Code, as under:-

“2. That the complainant, Shri Jarish son of Shri Riashat R/o Raipur Kalan, District Faridabad with other co-accused were arrested in the case FIR No.83 dated 17.07.2014 by the police of P.P. Chandpur, Faridabad. In the custody of the said police they were confined on the night of 17-07-2014 where the accused persons abused the complainant-Jarish and Rajuddin in filthy language and they started beating the accused persons. The accused No.1 gave beatings to the complainant Jarish and the accused No.2 started beating and Rajuddin without any reason and rhyme. The accused No.1 gave kicks, punch and Danda blows to the complainant resultantly the complainant started bleeding from his left ear and he sustained injuries on his nose and left side tooth. The accused No.2 gave Danda blow, kicks and punch blows to Shri Rajuddin resultantly he sustained injuries on his hand and wrist. The complainant and Shri Rajuddin badly cried but the accused persons did not stop. The accused persons threatened the complainant and Shri Rajuddin if they take any action against them then the accused persons will falsely implicate in some other heinous crimes or alternatively the accused persons will kill the complainant and Shri Rajuddin. The complainant was released on bail in the said case.”

It has come in evidence that there was scuffle between petitioners and others which led to registration of FIR No.83 dated 17.07.2014. Complainant-respondent alongwith others were called for investigation. They were then taken into custody and police officials brutally beat them at the Police Station when they were in lock up. In support of the complaint, respondent-Jarish Khan has appeared as CW1,

Rajuddin has appeared as CW2 and examined Dr. Vandana, Dr. Manish, Dr. Krishan as CW3, CW5 and CW6 respectively in order to prove their medico legal report.

Learned Judicial Magistrate refused to summon, however, learned Additional Session Judge, as noticed above summoned the petitioners under Sections 323, 325, 506, read with Section 34 of the Indian Penal Code.

As noticed above, learned counsel appearing for the petitioners submits that the order passed by the learned Additional Session Judge summoning the petitioners is not sustainable in view of lack of prior sanction as required under Section 197 of the Code.

Section 197 of the Code is extracted as under:-

“197. Prosecution of Judges and public servants.—(1)
When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government 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, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was

committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

[Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376D, or section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued

under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the Contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

From plain reading of Section 197 of the Code, it comes out that protection under Section 197 of the Code is with respect to offences which are alleged to have been committed by the public officials while acting or purporting to act in discharge of their official duty. The statute has used the words very carefully. In the present case, allegations are that the respondent had been brutally beaten while in Police Station when respondent alongwith other accused were called to join investigation. The petitioners and other co-

accused have already been granted concession of bail on 19.07.2014. Petitioners have been summoned for offence under Section 325 IPC which obviously means that learned Additional Session Judge had formed prima facie opinion that the petitioners have caused voluntarily grievous hurt to the complainant-respondent.

Now the question which this Court is called upon to answer is “whether such act of the police officials is falling within the scope of words while acting or purporting to act in discharge of their official duty?”.

In the considered opinion of this Court, the answer to the aforesaid question has to be in negative. It is not the case of the police officials that the complainant and his co-accused suffered injuries when the petitioners made an attempt to apprehend them. Respondent and his co-accused were in the Police Station. They were in custody of the police. In such circumstances, the injuries as alleged to have been caused by the petitioners cannot be justified and cannot be said to have been inflicted while acting or purporting to act in discharge of their official duty. In the civilized society, the police officials cannot be expected to indulge in such barbaric acts.

It may be noted that the requirement of prior sanction under Section 197 of the Code has been drawing attention of the Courts from time to time. Reference in this regard can be made to the 5 Judge Bench judgment passed by Hon'ble the Supreme Court in the case of **Matajog Dobey Vs. H.C. Bhari and another, AIR 1956 Supreme Court 44**. In this judgment, reliance was also placed on the judgment passed by Three Judge Bench of Hon'ble the Supreme Court in the case of **Amrik Singh Vs. State**

of Pepsu, AIR 1955 Supreme Court 309. There are two more Three Bench Judgments on this aspect, one is **AIR 1967 Supreme Court 776, P. Arul Swami Vs. State of Madras** and second one is **(1979) 4 SCC 177, S.B. Saha and others Vs. M.S. Kochar**. In the judgment passed in the case of **S.B. Saha and others (supra)**, Hon'ble the Supreme Court held that a balanced interpretation has to be given. Because if narrow interpretation is taken, all the offences would go out of the scope of Section 197 of the Code and if broader interpretation is taken even in cases where the officials have committed excesses, would stand protected. Recently, Hon'ble the Supreme Court in the case of **Urmila Devi Vs. Yudhvir Singh, (2013) 15 SCC 624** has once again reconsidered the entire case law.

Broadly, it has been laid in all these judgments that there has to be coherent nexus between the act complained and the duty of the public servant. Only those acts or omissions done by a public servant in discharge of its official duty having direct nexus with his official duty are protected which acts are done bona fide. There has to be a reasonable connection between the act and discharge of the official duty.

As noticed above, respondent was in police custody. The averments made in para 2 of the complaint which has been extracted above clearly prima facie establishes that the police officials had brutally beaten the respondent-complainant. Hence, now they cannot claim protection under Section 197 of the Code.

Learned counsel for the petitioners has relied upon a judgment passed by Hon'ble the Supreme Court in the case of **State of Orissa through Kumar Raghvendra Singh and others Vs. Ganesh Chander Jew, (2004) 8**

SCC 40.

This Court has carefully gone through the aforesaid judgment. After discussing the various judgments passed by Hon'ble the Supreme Court previously, Hon'ble the Supreme Court has ultimately allowed the petition not by granting protection under Section 197 of the Code but rather on facts. This would be clear from 2nd part of para 16 of the judgment.

Learned counsel for the petitioners has also relied upon another judgment passed by Hon'ble the Supreme Court in the case of **D.T. Virupakshappa Vs. C. Subash, (2015) 12 SCC 231**. In this judgment also, Hon'ble the Supreme Court relied upon the judgment passed in the case of State of Orissa (Supra) and the judgment passed in the case of **Om Parkash and another Vs. State of Jharkhand, (2012) 12 SCC 72**. On careful reading of judgment passed in the case of Om Parkash (Supra), it is apparent that Hon'ble the Supreme Court ultimately found that the officials cannot claim protection under Section 197 of the Code because it is reasonably established that there is no reasonable connection between the act and performance of the official duty.

In view of the aforesaid discussion, this Court has come to a conclusion that the petitioners in the facts of the present case are not entitled to claim protection under Section 197 of the Code.

Hence, the present petition is dismissed.

14.11.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**