

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 587 of 2020**

1. Birendra Sinku, S/o Late Shri B.R. Sinku, Aged about 54 years, The Then Sr. Divisional Mechanical Engineer, S.E.C. Railway, Raipur, Presently posted as Chief Workshop Manager, S.C. Railway, Rayanapadu (AP).
2. S.K. Senapati, S/o Sadhu Charan Senapati, Aged about 53 years, Senior Divisional Mechanical Engineer, S.E.C. Railway, Raipur, Chhattisgarh.

---Petitioners

Versus

1. Meharban Singh, S/o Shri Darshan Singh, Aged about 48 years, R/o Shop No. 57, Himalaya Complex, Akash Ganga, Bhilai, Tahsil and Distt. Durg, Chhattisgarh.
2. State of Chhattisgarh, Through the District Magistrate, Distt. Durg, Chhattisgarh.

--- Respondents

CRMP No. 591 of 2020

1. Shubham Verma S/o Umesh Chandra, Aged about 29 years, Coaching Depot Officer, S.E.C. Railway, Durg, Presently posted as Senior Coaching Depot Officer, S.E.C. Railway, Bilaspur, Chhattisgarh.
2. Samar Kar, S/o Late Manmatha Nath Kar, Aged about 52 years, The Then Coaching Depot Officer, S.E.C. Railway, Durg, Presently Posted as Senior

Divisional Mechanical Engineer, P.P. Yard, S.E.C.
Railway, Bhilai, Chhattisgarh.

---Petitioners

Versus

1. Meharban Singh, S/o Shri Darshan Singh, Aged about 48 years, R/o Shop No. 57, Himalaya Complex, Akash Ganga, Bhilai, Tahsil and Distt. Durg, Chhattisgarh.
2. State of Chhattisgarh, Through the District Magistrate, Distt. Durg, Chhattisgarh.

--- Respondents

For Petitioners	:-	Mr. Abhishek Sinha and Mr. Aditya Pandey, Advocates
For Respondent 1	:-	None
For State	:-	Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

20/11/2020

1. Since, the common question of facts and law is involved in both of these above-stated petitions and they have arisen out of the common order dated 03/05/2016 passed in Criminal Complaint No. 3524/2019 by the Chief Judicial Magistrate First Class, Durg, therefore, for the sake of convenience

they have been clubbed together and are being disposed of by this common order.

2. The four petitioners, who are senior Railway officers posted at the relevant time at the office of the General Manager, Raipur, calls in question the legality, validity and correctness of the order dated 03/05/2019 (Annexure P/4) by which learned Chief Judicial Magistrate, Durg, has issued process against them in exercise of the power conferred under Section 204 of CrPC for commission of offence punishable under Sections 420 read with Section 34 of IPC and the order dated 27/01/2020 by which learned revisional Court affirmed the order passed by the learned Magistrate and dismissed the revision preferred by the petitioners.

3. The complainant/respondent No. 1 herein filed a complaint under Section 200 of CrPC on 06/04/2018 stating *inter alia* that the S.E.C. Railway had awarded a contract for the work of cleaning platforms and coaches of the trains originating from Durg Railway Station among other cleaning services to GS & IS Company for a period of three years for which the Company was required to clean the platforms as well as Railway coaches as per the agreement, but the company did not perform the said

work in accordance with the agreement and various irregularities were found with regard to the cleaning of platforms as well as railway coaches due to which the passengers had to suffer. complaint was also made to the S.P. (Railway) but no action was taken by him.

4. Pursuant to the complaint, learned Judicial Magistrate, applying his judicial mind on 23/08/2018 directed for recording the statement of the complainant/respondent No. 1 and his witnesses and on the same date, the statements of complainant and his two witnesses namely Suresh Yadav and Kamata Prasad were recorded and ultimately, after taking into account the evidence and material available on record, learned Magistrate took cognizance of offence punishable under Section 420 read with Section 34 of IPC against the petitioners on 03/05/2019 and thereafter, issued process to the petitioners which has been called in question by the petitioners in the instant petition mainly on the ground that taking the allegation of the complaint and considering the other documents as well as the statements of the complainant and his witnesses, no criminal offence much less offence under Section 420 is made out against the petitioners. Moreover, it is the case of the

petitioners that learned Judicial Magistrate could not have issued process against the petitioners, being senior Railway officers, without the previous sanction of the Central Government under Section 197 of CrPC, therefore, the impugned order and the entire complaint deserves to be quashed.

5. None has entered into appearance on behalf of respondent No. 1 despite sufficient time being granted to appear, and respondent No. 2/State is a formal party.

6. Mr. Abhishek Sinha, learned counsel appearing for the petitioners, would submit that taking the contents of the complaint as well as the documents in support thereof and the statements of the complainant and his witnesses as it is, it is quite apparent that the allegation made in the complaint is with regard to the inaction on the part of the petitioners, at best, but no criminal act is alleged to have been committed by them for which cognizance has been taken by learned Magistrate perversely and at the best, there is only dereliction of duty on the part of the petitioners which does not attract the offence under Section 420 read with Section 34 of IPC and learned Magistrate, moreover, could not have issued process

to the petitioners without the previous sanction of the Central Government under Section 197(1) of CrPC, as such, the entire Criminal Complaint No. 3524/2019 deserves to be quashed as well as the order dated 03/05/2019 passed by learned Magistrate and the order dated 27/01/2020 passed by the revisional Court affirming the order passed by the learned Magistrate deserves to be set aside.

7. Mr. Jitendra Pali, learned Deputy Advocate General, would submit that the State is a formal party and therefore, he need not take any stand.

8. I have heard learned counsel for the petitioner, considered his submissions and perused the record with utmost circumspection.

9. A bare perusal of the material available on record would clearly show that on 06/04/2018, the complaint was filed by the complainant/respondent No. 1 to which learned Magistrate applied her mind and proceeded further by deciding to examine the complainant and his witnesses and ultimately, on 23/08/2018, their statements were recorded and thereafter, on 03/05/2019, learned Magistrate, after considering the contents of the complaint and the documents in support thereof as well as the material and evidence available on record,

proceeded under Section 200 to take cognizance of offence under Section 420 read with Section 34 of IPC against the petitioners and on the same date, issued process to them under Section 204 of IPC which has seriously been impugned in the complaint.

10. At this stage, it would be appropriate to notice Section 190(1)(b) of the CrPC which states as under: -

"190. Cognizance of offences by Magistrates.—(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) xxx xxx xxx

(b) upon a police report of such facts;

(c) xxx xxx xxx

(2) xxx xxx xxx"

11. Similarly, Section 197(1) of the CrPC states 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:

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx"

12. The aforesaid provisions contained in Section 197 of the CrPC embodies one of the exceptions to the general rule laid down in Section 190, that any offence may be taken cognizance of by the Magistrate enumerated therein. Sections 195 to 199 of the CrPC regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith.

13. The object of Section 197 of the CrPC is to guard against vexatious proceedings against public servants and to secure the well-considered opinion of a superior authority before a prosecution is launched against them. (See R.R. Chari v. State of Uttar Pradesh¹.) However, before Section 197 can be pressed into service, following two conditions must be satisfied:—

¹AIR 1962 SC1573

(1) the accused must be a public servant of the kind mentioned in the section i.e., he must be a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the State Government or Central Government; and

(2) the offence must be committed by the accused while acting or purporting to act in the discharge of his official duty. (See Madanraj v. Jalamchand Lodha².)

14. Use of words 'no' and 'shall' in Section 197 of the CrPC make it abundantly clear that bar on power of a Court to take cognizance of any offence without prior sanction is absolute and complete. (See State of Maharashtra v. Dr. Budhikota Subharao³ and State of Himachal Pradesh v. M.P. Gupta⁴.)

15. Likewise, 'previous sanction' means sanction to prosecute has to be accorded by the appropriate Government prior to taking of cognizance of offence.

16. The question of want of sanction goes to the root at the jurisdiction of the Court and therefore

2AIR 1960 SC 745

3(1993) 3 SCC 339

4AIR 2004 SC 730

the Court should consider at the earliest possible stage, whether such sanction under this provision is in law necessary and if it is, whether it has duly given, and it should express a definite opinion on the question. There is no requirement that an accused should wait for taking a plea that cognizance has been taken without previous sanction or he should wait till charges are framed. Accused can take a plea immediately or after cognizance is taken and process is issued.

17. Where accused is a public servant under Section 21 of the IPC and in view of the provisions of Section 197 of the CrPC, no cognizance could be taken by Magistrate before deciding the question as to whether sanction of Government was necessary before taking such cognizance and the trial Magistrate is bound to consider this aspect in his summoning order.

18. The Supreme Court in the matter of **Sankaran Moitra v. Sadhna Das and another**⁵ has emphasized that a prosecution hit by Section 197 of the CrPC cannot be launched without the contemplated

5(2006) 4 SCC 584

sanction. In paragraphs 11 and 22 of the report it has been held as under: -

"11. We find that even if we were to accept the submission of learned counsel for the complainant that the stage is not reached for considering whether sanction under [Section 197\(1\)](#) of the Code of Criminal Procedure is required in the present case or not, it would only be postponing the consideration of that question. As we have noticed earlier, in his application filed before the Chief Judicial Magistrate invoking [Section 210](#) of the Code of Criminal Procedure and praying for a stay of further proceedings, the appellant, has pleaded that the act was done by him in performance of his duty and in the application filed under [Section 482](#) of the Code of Criminal Procedure before the High Court in addition to reiterating that the alleged offence was committed by him in the course of performance of his duty, he had also invoked [Section 197\(1\)](#) of the Code of Criminal Procedure and had pleaded that the proceedings cannot go on and would be without jurisdiction for want of sanction under [Section 197\(1\)](#) of the Code of Criminal Procedure. Of course, the High Court has taken the view that the complaint would not attract [Section 197\(1\)](#) of the Code and that was the reason for rejecting the prayer of the appellant to quash the proceedings as being without jurisdiction for want of sanction. Learned counsel for the complainant has made a submission that the whole investigation was being delayed and the whole process was being delayed in view of the fact that the accused involved were police personnel and the State was more interested in protecting them than in having justice done. When we take note of this submission, postponing a decision on the applicability or otherwise of [Section 197\(1\)](#) of the Code can only lead to the proceedings being dragged on in the trial court and a decision by this Court, here and now, would be more appropriate in

the circumstances of the case especially when the accused involved are police personnel and the nature of the complaint made is kept in mind.

22. Learned counsel for the complainant argued that want of sanction under [Section 197\(1\)](#) of the Code did not affect the jurisdiction of the Court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate time. We are not in a position to accept this submission. [Section 197\(1\)](#), its opening words and the object sought to be achieved by it, and the decisions of this Court earlier cited, clearly indicate that a prosecution hit by that provision cannot be launched without the sanction contemplated. It is a condition precedent, as it were, for a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at the inception, but even at a subsequent stage. We cannot therefore accede to the request to postpone a decision on this question."

19. Reverting to the facts of the present case in the light of the principles of law flowing from the aforesaid judgments rendered by their Lordships of the Supreme Court, it is quite vivid that though petitioners are not removable from the office save by or with the sanction of the Central Government, yet learned Magistrate did not even deliberate on the issue as to whether sanction under Section 197 of the CrPC is required or not either at the time of taking cognizance under Section 200 of CrPC or at the

time of issuing process under Section 204 of CrPC.

20. However, at this stage, the question would be as to whether the offence alleged to have been committed by the petitioners is in discharge of their official duty ?

21. In order to answer the aforesaid question, it would be appropriate to notice the order dated 03/05/2019 by which learned Magistrate has taken cognizance of offence under Section 420 read with Section 34 of IPC against the petitioners herein and thereafter, issued process to the petitioners, which states as under :-

“03.05.2019 परिवादी स्वतः उपस्थित |

परिवाद पंजीयन पर तर्क हेतु नियत है |

तर्क श्रवण किये गए |

परिवाद पत्र में परिवादी के द्वारा धारा 420, 467, 468, 471 सहपठित धारा 34 भा.द.सं. के अंतर्गत प्रस्तुत किया है | परिवादी ने अपने परिवाद में व्यक्त किया है कि दक्षिण मध्य रेलवे के द्वारा दुर्ग से निकलने वाली ट्रेनों की साफ़ - सफाई तथा ओ.बी.एच.एस. (ओन बोर्ड हाउस कीपिंग सर्विस) के ठेका जी.एस.एन.एंड.आई.एस.कंपनी, अभियुक्त क्र. 1 को दिया जाना बताया है | अनुबंध अनुसार प्लेटफॉर्म में लगी रेल के डिब्बों की साफ - सफाई में जो सामग्री उपयोग करना चाहिए था वह उस श्रेणी की न होना कहा है | परिवादी द्वारा अनुबंध के अनुसार कार्य न किये जाने के आधार पर रेलवे के संबंधित अधिकारियों को शिकायत की गयी, किन्तु शिकायत के बाद भी उचित कार्यवाही न किया जाना कहा है | साफ सफाई कर्मियों के द्वारा अनुबंध में लिखे केमिकल का उपयोग नहीं किया जाना व्यक्त किया है | दुर्ग से निकलने वाली हर ट्रेन में छल-कपट, धोखाधड़ी कोच केयर सेंटर में होना भी बताया है | परिवादी द्वारा उक्त संबंध में पुलिस अधीक्षक रेलवे रायपुर को लिखित शिकायत भी करना कहा है किन्तु किसी भी प्रकार की कोई कार्यवाही नहीं की गयी |

परिवादी के द्वारा अपने शपथपत्रीय कथन में भी अपने परिवाद का समर्थन किया है | व्यक्त किया है की ट्रेन के डिब्बों को धोने के लिए नकली केमिकल के उपयोग किया जा रहा है | साक्ष्य में बताया है की ट्रेन के डिब्बों की साफ सफाई के संबंध में अनियमितता होना व्यक्त किया गया | समर्थन में साक्षी सुरेश यादव एवं कामता प्रसाद के कथन भी करवाया है, उक्त साक्षियों ने भी परिवादी के कथनों के भी समर्थन किया है | परिवाद पत्र के साथ संलग्न दस्तावेजों से प्रथम

दृष्टया अपराध आरोपी क्र. 1 से 5 जी.एस. एंड. आई. एस. कंपनी द्वारा प्रबंधक रेलवे कोचिंग यार्ड रेलवे स्टेशन दुर्ग, शुभम वर्मा, कोच डिपो ऑफिसर रेलवे दुर्ग, समर कर तात्कालिक कोच डिपो ऑफिसर रेलवे दुर्ग, एस. के. सेनापति सीनियर डी. एम्. आई व् बी.के. सिंकू तात्कालिक सीनियर डी. एम्. आई सी. एंड. डब्लू. के विरुद्ध बनना दर्शित है। अतः परिवाद धारा 420/34 भा.द.सं. के अंतर्गत पंजीबद्ध किया जाता है।

परिवादी द्वारा परिवाद पत्र, दस्तावेज तथा उनके द्वारा शपथ पर पेश प्रारंभिक साक्ष्य के परिशीलन से प्रथम दृष्टया अनावेदक/आरोपी के विरुद्ध धारा 420/34 भा.द.सं. के अंतर्गत अपराध पंजीबद्ध किये जाने का आधार दर्शित हो रहा है। प्राप्त निर्देशानुसार दिनांक 01-01-2014 से पेश संस्थित, पंजीयन किये जाने वाले प्रत्येक परिवादी का Central Registration किया जाना है। प्रस्तुतकार को निर्देशित किया जाता है की वह प्रस्तुत परिवाद को धारा 420/34 भा.द.सं. के अंतर्गत Central Registration हेतु Central Filing Section प्रेषित करें एवं रजिस्ट्रेशन क्रमांक प्राप्त करें। मूल दस्तावेज अवलोकन पश्चात परिवादी अधिवक्ता को किये गायें।

Central Registration क्रमांक प्राप्त होने पर परिवादी द्वारा तीन दिवस के भीतर आवश्यक रूप से तलवाना अदा करने पर आरोपी को परिवाद पत्र एवं दस्तावेजों की प्रति सहित पंजीकृत डाक से अथवा हम्दस्त समंस जारी हो।

प्रकरण आरोपीगण की उपस्थिति हेतु ०४/०७/२०१९

सही।-

(लोकेश पटले)

न्यायिक मजिस्ट्रेट प्रथम श्रेणी

दुर्ग, छ. ग. "

22.A careful perusal of the aforesaid order would show that the only allegation leveled against the petitioners is that the work awarded to the GS & IS company for cleaning of platforms as well as Railway coaches was not performed by them satisfactorily and they failed to adhere to the terms of the agreement for which complaint was made to the S.P. (Railway) but no action was taken by him in this regard.

23.Taking the contents of the complaint and the order as passed by learned Magistrate as it is, it cannot be said that the petitioners have done any criminal act much less any act which attracts offence under Section 420 of IPC. At the best,

the petitioners failed to discharge their duty and take any action, but that would not attract the penal provision of Section 420 of IPC. As such, it cannot be held that the ingredients of offence under Section 420 of IPC is attracted against the petitioners except for the allegation of dereliction of duty on their part and it cannot be said as a reason for taking cognizance of offence under Section 420 of IPC against the petitioners and thereafter, for issuance of process. As such, the provisions of Section 197 of CrPC are squarely attracted and no prosecution could have been launched against the petitioners under Section 420 read with Section 34 of IPC without the previous sanction of the Central Government under Section 197(1) of CrPC for their official act.

24. Consequently, both the Courts below have erred in not considering the fact that taking the allegations of the complaint as it is, no offence under Section 420 read with Section 34 of IPC is made out against the petitioners and moreover, previous sanction from the Central Government under Section 197 of CrPC was also required for

issuing process against them for their official act.

25.As a fallout and consequence of the aforesaid legal analysis, Criminal Complaint No. 3524/2019 pending before the Court of Chief Judicial Magistrate First Class, Durg with regard to the petitioners is hereby quashed and the order dated 03/05/2019 issuing process to the petitioners as well as the revisional order dated 27/01/2020 are hereby set aside. It is made clear that this Court has not expressed any opinion about the complaint filed and pending against the GS & IS Company.

26.Accordingly, the instant petition under Section 482 of CrPC is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet