

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.2370 of 2018Order reserved on: 16-7-2020Order delivered on: 5-8-2020

Rajesh Singh Rana, S/o Shri Ajit Singh Rana, age 37 years, Occupation Service, presently posted as Director, Woman & Child Development, Secretariat, Mahanadi Bhawan, Naya Raipur and resident of D-62, City of Dream, Kachna, District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the District Magistrate, Narayanpur, District Narayanpur.
2. Smt. Sarita Soni, widow of Late R.P. Soni, R/o Mangla Chowk, Near Lafagarh Gas Agency, District Bilaspur (C.G.)

---- Respondents

For Petitioner: Mr. Rajeev Shrivastava, Advocate.

For Respondent No.1 / State: -

Mr. Mateen Siddiqui, Deputy Advocate General.

For Respondent No.2: -

Mr. Saurabh Dangi, Advocate.
-----Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Order

1. Proceedings of this matter have been taken-up for final hearing through video conferencing.
2. Morgue No.34/2012 was registered in Police Station Narayanpur in which it was mentioned that one R.P. Soni, Executive Engineer, Rural Engineering Services committed suicide by pouring kerosene oil on his body and setting himself ablaze. The case was investigated by the jurisdictional police and ultimately, closure report was submitted before the jurisdictional Magistrate, but the Magistrate did not accept the report and on 14-1-2016 directed for further investigation on certain points and thereafter, investigation / final report was

submitted. This time, by order dated 6-11-2017, the Chief Judicial Magistrate, Narayanpur directed for taking cognizance of the offence under Section 190 of the CrPC for the offence punishable under Section 306 read with Section 34 of the IPC against the following persons: -

1. Petitioner Rajesh Singh Rana being Chief Executive Officer, Zila Panchayat, Narayanpur;
2. Madan Lal Nag, Technical Coordinator, Zila Panchayat, Narayanpur;
3. Contractor Gautam Kumar Jain; and
4. Mukesh Kumar Jain.

The Chief Judicial Magistrate took cognizance of the above-stated offences under Section 190 of the CrPC against the aforesaid persons finding that there is sufficient ground for proceeding against them and also directed for issuance of summons to the petitioner and also directed for committal of the case to the Court of Session for trial against the accused persons.

3. Being aggrieved against the said order, Rajesh Singh Rana preferred a revision petition before the revisional Court which was dismissed by the learned Sessions Judge, Kondagaon by order dated 23-7-2018 against which this petition (Cr.M.P.No.2370/2018) under Section 482 of the CrPC has been preferred stating inter alia that the order taking cognizance as well as the revisional order is contrary to the provisions contained in Section 197 of the CrPC and no offence under Section 306 of the IPC is made out against him and therefore the petition be allowed.
4. Return has been filed by the State and the complainant as well opposing the averment made in the petition stating inter alia that the

learned trial Magistrate has rightly taken cognizance of the offence against the petitioner and no case is made out for interference in the order taking cognizance dated 6-11-2017 as well as in the revisional order passed by the learned Sessions Judge.

5. Mr. Rajeev Shrivastava, learned counsel appearing for petitioner, would submit that the trial Magistrate committed a grave legal error in taking cognizance under Section 190 of the CrPC ignoring the fact that the present petitioner is a member of Indian Administrative Service (IAS) and without having prior approval of the Central Government, offence under Section 306 read with Section 34 of the IPC could not have been taken cognizance of, as the petitioner can be removed from service only by the Central Government and therefore competent authority to grant sanction is the Central Government. He would further submit that the petitioner was performing his duty strictly in accordance with law, therefore, for taking cognizance of the offence, prior approval of the Central Government under Section 197 of the CrPC was absolutely necessary. He would also submit that even otherwise, taking the contents of the FIR as it is, no offence under Section 306 of the IPC is made out against the petitioner and thus, on both the counts i.e. on the point of Section 197 of the CrPC as well as also on the merits of the charges, the order impugned as well as the order dated 6-11-2017 deserves to be set aside and the petitioner deserves to be discharged from the offence under Section 306 of the IPC.
6. Mr. Mateen Siddiqui, learned Deputy Advocate General appearing for the State, would submit that petitioner Rajesh Singh Rana is a member of IAS and his appointing authority is the Central Government, but the order of the learned Magistrate and that of the

revisional Court are supportable and are in accordance with law. He would further submit that offence under Section 306 read with Section 34 of the IPC is made out against the petitioner.

7. Mr. Saurabh Dangi, learned counsel appearing for complainant Smt. Sarina Soni, would submit that prima facie offence under Section 306 of the IPC is made out against the petitioner and therefore the trial Magistrate is absolutely justified in making offence under Section 190 of the CrPC, though the point of sanction is not considered, but sanction is not at all required in this case.
8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
9. By order dated 6-11-2017, the learned Magistrate directed for taking cognizance of the offences under Section 190(1)(b) of the CrPC for the offence punishable under Section 306 read with Section 34 of the IPC and also directed the case to be committed to the Court of Sessions. It is quite vivid that the petitioner is a member of Indian Administrative Service (IAS) and he is not removable from his post except by the sanction of the Central Government, but the learned Magistrate did not consider the applicability of Section 197 of the CrPC. However, the learned Sessions Judge declined to deliberate on the issue holding that such a question of sanction or applicability of Section 197 of the CrPC has not been raised before the learned Magistrate leading to filing of these petitions before this Court. 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

especially 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”

10. 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”

11. 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 193 and 195 to 199 of the CrPC regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith.

12. 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 Pradesh**¹.) However, before Section 197 can be pressed into service, following two conditions must be satisfied:—

(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 Lodha**².)

13. 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 Subharao**³ and **State of Himachal Pradesh v. M.P. Gupta**⁴.)

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

15. The question of want of sanction goes to the root at the jurisdiction of the Court and therefore 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 after cognizance is taken and

1 AIR 1962 SC1573

2 AIR 1960 SC 745

3 (1993) 3 SCC 339

4 AIR 2004 SC 730

process is issued.

16. 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.

17. 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 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

5 (2006) 4 SCC 584

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.”

18. 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 the petitioner is not removable from the office save by or with the sanction of the Central Government, yet the learned Magistrate even did not deliberate on the issue as to whether sanction under Section 197 of the CrPC is required or not before taking cognizance of the offence, as it is the case of the petitioner (Rajesh Singh Rana) that being Chief Executive Officer, Zila Panchayat, Narayanpur, at the relevant point of time, he has no role in the said offence and he has unnecessarily been involved and being dragged, as such, the learned Magistrate was required to consider the applicability of Section 197 of the CrPC before taking cognizance of the offence under Section 190(1)(b) of the CrPC for the aforesaid offences against the petitioner. The learned Magistrate was required to decide whether the act which is done or omitted to be done by the petitioner / public officer requires sanction under Section 197 of the CrPC, if so, the officer will be protected and leave under Section 197 of the CrPC

would be necessary, however, if it is alleged that it is not in official capacity, the officer will not be protected, but the learned Magistrate has omitted to consider the applicability of mandatory provision of Section 197 of the CrPC before taking cognizance of the aforesaid offence under Section 190(1)(b) of the CrPC. The revisional Court also omitted to consider the plea that such a plea has not been raised before the learned Magistrate, rather missed the point that at the time of taking cognizance of the offence before the learned Magistrate, the petitioner was not represented and he was not noticed and after issuing summons, he filed revision questioning that order. Consequently, the order passed by the learned Magistrate dated 6-11-2017 qua the petitioner and the order of the revisional Court dated 23-7-2018, both are set aside and the matter is remitted to the learned Magistrate to pass fresh order in accordance with law qua the petitioner only. It is made clear that this Court has not expressed any opinion about the merits of the matter and has not expressed any opinion about other co-accused.

19. The petition is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge