

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 03.02.2020
Pronounced on : 11.08.2020

+ **CRL.M.C. 5379/2013**

ANUJ @ GUNGA

..... Petitioner

Through: **Mr. Bharat Bhushan Dhingra, Adv.**

versus

STATE & ORS.

..... Respondents

Through: **Mr. M.S.Oberoi, APP for the State.**
Mr. Sahil Mongia, Adv. for R-2 to 4.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

1. The present petition has been filed by the petitioner with the prayer to set aside the impugned order dated 03.10.2013 passed by the Ld. A.S.J. in Crl. Revision No. 75/2012 titled as "Jai Prakash & Ors. Vs. State & Anr." vide which the Ld. A.S.J. held that the order of the framing notice U/s 341/323 IPC was without any merits and allowed the said Crl. revision filed by the revisionists (respondent Nos. 2 to 4 herein) by setting aside the impugned order dated 30.08.2012 passed by the Ld. MM and discharged the revisionists who are respondent Nos. 2 to 4 herein. The petitioner has further prayed to uphold the orders dated 30.08.2012 passed by the Ld. Trial Court

in criminal complaint case No. 407a/12/05 titled as "Anuj @ Gunga Vs. Jai Prakash & Ors."

2. The state (respondent No. 1) has filed the status report and respondent Nos. 2 to 4 have also filed their replies. The petitioner filed rejoinder to the replies of the respondents.

3. I have heard the Ld. APP for the State, Ld. Counsel for the petitioner and the Ld. Counsel for respondent Nos. 2 to 4 and perused the records.

4. It has been argued by the Ld. counsel for the petitioner that the Ld. A.S.J. has ignored the medical records of the petitioner and has not appreciated the MLC's in their right perspective despite the order of the Ld. MM for examination of the petitioner in Hindu Rao Hospital on 22.01.2005 as the petitioner was produced in bad condition in the court and was not able to stand. It is further argued that the Ld. ASJ has not appreciated that the petitioner remained in Jail hospital from 25.01.2005 to 29.01.2005 because of the beatings and torture given by the respondent Nos. 2 to 4. It is argued that the Ld. ASJ has also not appreciated that the petitioner was kept in illegal confinement from 19.01.2005 till 20.01.2005 when he was falsely implicated and has also not appreciated that a sum of Rs. 80,000/- was demanded from his father for his release. It is further argued that the Ld. ASJ has grossly erred observing that sanction for prosecution was required U/s 140 of the DP Act and 197 Cr.P.C as the acts of the respondents are the acts which fall within the purview of official discharge of their duties.

5. On the other hand, it is urged by the Ld. counsel for respondent Nos. 2 to 4 that all the allegations of beatings and torture against the respondent Nos. 2 to 4 have been found to be false by the Ld. Magistrate and that is why the Magistrate has only summoned the respondent Nos. 2 to 4 U/s 323 IPC and not under any serious sections. It is further argued that as the petitioner was satisfied with the summoning order dated 29.08.2011, therefore, he did not lay any challenge to the said summoning order by virtue of which the respondent Nos. 2 to 4 were only summoned U/s 323/341 IPC. It is further argued on behalf of the respondent Nos. 2 to 4 that had the allegations made by the petitioner against the respondent Nos. 2 to 4 in regard to severe beatings, torture and demand of bribe etc. would have been true, then there was no reason for him not to challenge the summoning order before superior court and this conduct of the petitioner shows that he has leveled false allegations against the respondent Nos. 2 to 4.

6. It is further argued by the counsel for the respondent Nos. 2 to 4 that the Magistrate could not have taken cognizance against the respondent Nos. 2 to 4 who are the police officers as no sanction for prosecution was obtained U/s 140 of the Delhi Police Act and 197 Cr.P.C. as the acts done by the respondent Nos. 2 to 4 were in the colour of the duty and the acts had direct nexus with the duty assigned to them by virtue of their being police officers which were the mandatory provisions before initiating any proceedings against them.

7. It is further submitted by the Ld. counsel for the respondent Nos. 2 to 4 that the Ld. Sessions Judge has rightly observed that the provisions of

Section 323 IPC are not attracted in the facts and circumstances of this case and the respondent Nos. 2 to 4 could not have been charged U/s 341 IPC as the petitioner was arrested in a criminal case bearing FIR No. 47/05.

8. In brief, the facts of the case are that on 19.01.2005 at about 2:30 p.m. two policemen in plain clothes came in a Tata Indica Car and asked the petitioner to accompany him for repair of their inverter. The petitioner accompanied them in his own Maruti Wagon-R car bearing No. HR-29-K-5999, but the petitioner was illegally confined and detained at police post Sector 16 Rohini by respondent Nos. 2 to 4, ASI Jai Bhagwan and Ct. Satpal alongwith other police personnel.

9. It is alleged that the petitioner was mercilessly beaten and tortured in the police post by respondent Nos. 2 to 4 alongwith other police personnel. It is further alleged that they had put danda in the private part of the petitioner as a result of which blood started coming out of his private part. The petitioner has also alleged that he was given electric shock, hanged from his feet and was stripped and beaten with wire. It is alleged that when the petitioner did not return, his father reached the police post to enquire about him but instead of providing information about the petitioner, respondent No. 2 to 4 and other police officials abused his father and threatened him with dire consequences. And respondent No. 3 in the presence of respondent No. 2 asked the petitioner's father to bring Rs. 80,000/- for the release of petitioner.

10. It is alleged that the petitioner was even threatened that he would be involved in other cases on the disclosure of other criminals, in case his

father fails to give Rs. 80,000/-. Thereafter, the petitioner who is deaf and dumb since childhood was involved in 5 false cases by the respondents. It is also alleged that the arrest of the petitioner was shown on 20.01.2005 at 7:40 p.m. while he was kept in illegal confinement since 19.01.2005 from 2:30 p.m. The petitioner was medically examined on 21.01.2005 at Dr. B.S.A. Hospital during custody. He was again medically examined on 22.01.2005 on the orders of the Ld. MM when he was produced before the Ld. MM, who observed that the petitioner was not able to move or stand on his own legs, so he was got medically examined at Hindu Rao Hospital vide MLC No. 707/2005. It is further alleged that since the petitioner was mercilessly beaten by respondent No. 2 to 4 as a result of which he received serious and grievous injuries, therefore, during his judicial custody in Central Jail Tihar, he was provided with medical treatment where he remained admitted in the hospital from 25.01.2005 to 29.01.2005. It is alleged that after his release from the jail on 23.02.2005 he continued to suffer bodily pain. After his release, the petitioner and his father regularly visited higher police authorities for taking action against respondent No. 2 to 4 and other police officials but no action was taken against them. Therefore, the petitioner filed criminal complaint case No. 407a/12/05 U/s 200 Cr.P.C. alongwith application U/s 156 (3) Cr.P.C.

11. In my opinion, the main points for consideration in the present case are that: (a) whether the cognizance of the offence taken by the Ld. Magistrate was barred by limitation provided by Section 140 of the Delhi Police Act, (b) that the three respondents i.e. respondent Nos. 2 to 4 who are

the police officers and the acts alleged to have been committed by them relates to acts and omissions done by them in the discharge of their official duty and, therefore, without a valid permission under Section 197 Cr.P.C. cognizance against them could not have been taken.

12. The Ld. MM vide order dated 30.08.2012 has observed that sanction U/s 197 Cr.P.C and permission U/s 140 of the DP Act was not required as the alleged acts of the respondent Nos. 2 to 4 had no nexus with their statutory duty.

13. However when the said order was challenged by respondent Nos. 2 to 4 before the Ld. Sessions Court, it was observed by the Ld. Sessions Court that provision of Section 323 IPC are not attracted in the present case because prima facie there is no evidence that respondent No. 2/complainant (petitioner herein) was given beating as deposed by him and nothing is reflected in any MLC. It was further observed by the Ld. Sessions Court that the act of the revisionists (respondent Nos. 2 to 4 herein) arresting the petitioner comes within the purview of the official discharge of their duty, therefore permission under Section 140 of the DP Act before initiating proceedings against the revisionists (respondent Nos. 2 to 4 herein) and Section U/s 197 Cr.P.C was required for taking cognizance against them.

14. Section 140 of the Delhi Police Act is a special act and puts a special bar to suits and prosecution against police officers. The same reads as under:

"140. Bar to suits and prosecutions "(1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty

or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of:

Provided that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.

(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrong doer not less than one month's notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed.

(3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof."

15. The question that arises is whether the acts constituting the offences U/s 323/341 IPC as found by the Magistrate were done by respondent Nos. 2 to 4 in the colour of duty or authority or in excess of any such duty or authority. If it is so, the prosecution has to be instituted within 3 months from the date on which the acts were committed. In the present case, admittedly, the complaint was filed on 23.09.2005 i.e. after 8 months of the alleged offences.

16. In *Prof. Sumerhand v. Union of India and Ors.*; MANU/SC/0561/1994 : 1993 CriLJ3531, the Hon'ble Supreme Court has

explained what is an act done under the colour of duty or authority. In doing so it followed its earlier decision in the case of *Verupaxappa Veerappa Kadampur v. State of Mysore* MANU/SC/0155/1962: AIR1963SC849. In the judgment of *Verupaxappa Veerappa Kadampur* (Supra), the expression under colour of duty has been explained in the following language:

" The expression "under colour of something" or "under colour of duty", or "under colour of office", is not infrequently used in law as well as in common parlance. Thus in common parlance when a person is entrusted with the duty of collecting funds for, say, some charity and he uses that opportunity to get money for himself, we say of him that he is collecting money for himself under colour of making collections for a charity. Whether or not when the act bears the true colour of the officer duty or right, the act may be said to be done under colour of that right, office or duty, it is clear that when the colour is assumed as a cover or a cloak for something which cannot properly be done in performance of the duty or in exercise of the right or office, the act is said to be done under colour of the office or duty or right. It is reasonable to think that the legislature used the words "under colour" in Section 161 to include this sense."

17. It was further clarified in the case of *Sumer Chand* (Supra) that it is only when the act is in violation of the duty, the question of the act being done under colour of duty arises and, therefore, the fact that the act has been done under gross violation of the duty can be no reason to think that the act has not been done under colour of the duty.

18. Most importantly in the case of *Verupaxappa Veerappa Kadampur* (Supra), the Supreme Court said that when an act is in dereliction of the duty, the same shall also be an act under colour of duty. In para 10 of that judgment, the Supreme Court said as under:

"10. It appears to us that the words "under colour of duty" have been used in S. 161(1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police officer) prepares a false Panchnama or a false report is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in Stroud's Dictionary "as a veil to his falsehood." The acts thus done in dereliction of his duty must be held to have been done "under colour of the duty".

19. In the case of *State of Maharashtra v. Narhar Rao* MANU/SC/0084/1966 : 1966CriLJ1495, it was held that a Head Constable who accepted the bribe for weakening the prosecution case, had not done the act under the colour of the office. The reason for so holding was that the alleged acceptance of bribe by the accused officer was not an act which could be said to have been done under the colour of office or done in excess of duty or authority within the meaning of Section 161 of the Bombay Police Act.

The distinction between the case of *Narhar Rao* (Supra) and the one in *Verupaxappa Veerappa Kadampur* (Supra) is that in *Verupaxappa Veerappa Kadampur* (Supra) it was duty of the Police Constable to prepare a panchnama and the act of preparation of false panchnama was done under the colour of his office and there was a nexus between the act complained of and the statutory duty that the police Head Constable was to perform whereas there was no such nexus between the official duty and the acceptance of bribe or the same reason in the case of *State of Maharashtra v. Atma Ram*, AIR 1966 SC 1786, the acts of a police officer of assault and confinement of a suspect in police custody were not held to be acts done

under colour of duty since the said acts had no reasonable connection or nexus with the duty or authority imposed upon the police officer under the Bombay Police Act or any other enactment conferring the powers on the police under the colour of which this act was done and that such acts fell completely outside the scope and duties of the respondents police officers and they were not entitled to protection conferred by Section 161 of the Bombay Police Act.

20. After considering all the afore-mentioned judgments, the Supreme Court in the case of Sumer Chand (Supra) found that the respondent No. 4 who was in charge of Mayapuri police post and who allegedly had registered a false, vexatious and malicious report against the appellant and respondent No. 3, who was station house officer of police station Naraina, who had allegedly filed the challan in court against the appellant and other accused on the basis of the said report, had done acts under colour of duty within the meaning of Section 140 of Delhi Police Act. In *Matajog Dobey Vs. H.C. Bhari*, Criminal Appeals Nos. 67 and 68 of 1954 decided on 31.10.1955 by the Hon'ble Supreme Court of India it was held as follows:

“Criminal - previous sanction - Article 14 of Constitution of India, Sections 197 and 197 (1) Criminal Procedure Code, 1898 and Sections 109, 323, 341, 342 and 504 of Indian Penal Code, 1860 - special leave to appeal against Orders of High Court - appellants assaulted by officials searching premises - search regarding income tax proceedings - enquiry conducted by Magistrates - complaint dismissed for want of sanction by Government - High Court upheld dismissal of complaint - appeal filed in Supreme Court - Section 197 not unconstitutional in view of Article 14 - discrimination based on reasonable classification - safeguard for protection of public servants from harassment during discharge of duties -

whether Court can take cognizance of case without previous sanction - injuries of appellants indicate nothing more than a scuffle - Apex Court held, reasonable connection between their act and discharge of duty - obvious case of sanction.”

21. In the instant case, it is alleged against respondent Nos. 2 to 4 that they kept the petitioner in illegal confinement from 19.01.2005 at 2:30 p.m. to 20.01.2015 at 7:45 p.m. and he was severally beaten in the police station by them and thereafter he was implicated in many other false cases. No doubt, the petitioner was acquitted by the Court in case FIR No. 47/05, but that acquittal by itself does not mean that the arrest was not made by the respondents No 2 to 4 in the official discharge of their duty. The said act of the respondent Nos. 2 to 4 in arresting the petitioner comes within the purview of official discharge of duty. In the said judgment, the Ld. MM while acquitting the petitioner has not stated that the petitioner was lifted from his shop as claimed by him in his complaint/testimony recorded in the complaint case, rather he has only been given benefit of doubt as no public person had joined the investigation.

22. The petitioner was arrested during the investigation of a criminal case and therefore, it cannot be said that he was kept in illegal confinement in the police station by the respondent Nos. 2 to 4. It is also one of the allegation against the respondent Nos. 2 to 4 that they had severally and mercilessly beaten the petitioner while he was in the police station. On these allegations, the respondent Nos. 2 to 4 were summoned U/s 323 of the IPC as well. The Magistrate has not believed the story of the petitioner in regard to serious allegations of torture and beatings alleged to have been committed by the respondent Nos. 2 to 4.

23. The Ld. A.S.J. in the impugned order dated 03.10.2013 has observed that the perusal of the MLC of the petitioner dated 21.01.2005 does not show any external injury. Another MLC of Hindu Rao Hospital was placed by the petitioner on record but again in that MLC no fresh external injury was mentioned and the MLC only mentions about pain in sole of left foot. Therefore, the Ld. A.S.J. observed that the MLC's relied upon by the petitioner does not prove any external injury and came to the conclusion that there is no evidence that the petitioner was given beatings as deposed by him which could attract the provisions of Section 323 IPC.

24. The observation in the MLC in regard to the pain in sole of left foot does not indicate that he was tortured or beaten when there is nothing in the MLC's to show that there was any external injury on the body of the petitioner. It is also pertinent to mention here that the Magistrate in the summoning order has also not believed the story of the petitioner with regard to the excess alleged to have been committed upon by the respondent Nos. 2 to 4.

25. There can be no two opinions that the acts allegedly done by the respondent Nos. 2 to 4 were acts done under the colour of duty. What the respondent Nos. 2 to 4 have done in the investigation of the case had direct nexus with the duty assigned to them by virtue of their being police officers assigned with the investigation of the case. The Supreme Court has sufficiently explained that if the alleged offence is an act committed in dereliction of duty, the same also will be an act under the colour of duty and the officers could not be deprived of the protection of the particular Police

Act applicable on the argument that their duty did not require them to perform certain acts.

26. The catena of Supreme Court decisions on this point clearly leads to the conclusion that the acts and omissions of the respondent Nos. 2 to 4 which have lent them into the criminal case has a clear direct nexus with the duty because it was only in performance of the duty that such acts and omissions had taken place. This is not a case in which the police officers were caught or found doing acts which were not a part of their duty.

27. Therefore, I have no hesitation to hold that the acts complained of had been done by the respondent Nos. 2 to 4 under the colour of duty and therefore, the limitation prescribed U/s 140 of Delhi Police Act will apply. In this view, cognizance of the offences as against respondent Nos. 2 to 4 was barred by limitation on the date the impugned order of summoning was passed by the Magistrate.

28. This takes us to the second question of protection under Section 197 of the Code. The relevant part of section 197 reads 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."

29. It is not disputed that the respondent Nos. 2 to 4 are such public servants who cannot be removed from office except with the sanction of the Government. For their prosecution for an act purported to be an act in the discharge of their official duty, action cannot be taken except with the previous sanction of the State Government. The question to be examined, therefore, is whether the act was done in discharge of the official duty of the respondent Nos. 2 to 4. As explained above, the act was not only done under the colour of duty, in fact, the act was done directly in discharge of official duty.

30. In *Abdul Wahab Ansari v. State of Bihar and Anr.*, MANU/SC/0643/2000 : 2000CriLJ4631, a Circle Inspector under orders to use police force to remove encroachment directed opening of fire when some miscreants hurled stones and situation became out of control. The Supreme Court found that the act of opening fire was in exercise of official duty and that cognizance of the offences should not be taken without prior sanction of the competent authority. In the case of *Gauri Shankar Prasad v. State of Bihar and Anr.*, MANU/SC/0289/2000 : 2000CriLJ4031, a Sub-Divisional Officer while carrying out the operation of removing of public encroachment was alleged to have entered the chamber of the complainant, abused him and taken him and his wife to police station was held to have acted with reasonable nexus with official duty necessitating sanction to prosecute.

31. The test for determining whether the provisions of Section 197 of the Code would come to the aid of an accused in a given case has been amply explained by the Supreme Court in the case of *P.K. Pradhan v. State of Sikkim* represented by the Central Bureau of Investigation, 2001 2 AD SC 581. After examining a number of decisions on this aspect the conclusion arrived at was as under:

" Thus from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required."

32. This judgment was referred to in the subsequent judgment of the Supreme Court in the case of *Raj Kishor Roy v. Kamleshwar Pandey and Anr.*, MANU/SC/0645/2002 : 2002 (3) Crimes 67 (SC). In the present case, it has to be said, though at the cost of repetition, that the alleged offence has direct nexus with the duty assigned and, therefore, has to be deemed to be an act purporting to be in discharge of the official duty. Therefore, no court can take cognizance of the offence except with the previous sanction of the Government. In this view of the matter also, the learned Magistrate was

wrong in taking cognizance of the offence against the respondent Nos. 2 to 4 as there was no sanction to prosecute them under Sections 197 of the Code.

33. In view of the discussions mentioned hereinabove, I find no infirmity in the impugned order dated 03.10.2013 passed by the Ld. A.S.J., the same is, therefore, upheld. Consequently, the present petition is dismissed.

RAJNISH BHATNAGAR, J

AUGUST 11, 2020

Sumant

