

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4453 of 2011

AFR

Ajaya Kumar Barik

....

Petitioner

Mr. Jagbandhu Sahoo, Senior Advocate

-Versus-

State of Odisha and Another

....

Opposite Parties

Mr. P.K. Muduli, AGA

Mr. P.S. Das, Advocate for O.P. No.2

CORAM:

JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT : 01.11.2022

1. The petitioner has preferred the instant petition under Section 482 Cr.P.C. challenging the legality and judicial propriety of the impugned order of cognizance dated 16th April, 2011 under Annexure-1 passed in ICC Case No.20 of 2009 by the learned J.M.F.C., Kodala, Ganjam on the grounds inter alia that the same is not tenable in law and hence, liable to be quashed in the interest of justice.

2. Briefly stated, opposite party No.2 filed a complaint in the court of learned J.M.F.C. Kodala with regard to an incident dated 9th February, 2008 during which it is alleged that the petitioner and other police staff illegally seized his motorcycle claiming it to be stolen and in that connection, he was ill-treated and abused in filthy language, inasmuch as, the vehicle was not released despite showing proof regarding its ownership. After the complaint was received, the learned court below recorded the initial statement of the complainant and after conducting an enquiry in terms of Section 202 Cr.P.C., the impinged order under Anenxue-1 was passed and the petitioner was summoned under Annexue-2. According to the petitioner, the alleged incident related to seizure CRLMC No.4453 of 2011

of a Hero Honda motorcycle from the possession of the brother of opposite party No.2 which was carried out on the complaint of one Akhay Kumar Mohapatra and with regard to its ownership, no valid documents could be produced and therefore, it was not released. The contention of the petitioner is that since the documents submitted by the petitioner failed to satisfy the ownership of the vehicle, it was not released in favour of opposite party No.2 and in order to harass him, the complaint was filed with false allegations made therein and the learned court below without properly verifying the documents and demanding a sanction in terms of Section 197 Cr.P.C. passed the order of cognizance under Annexure-1. It is alleged that the vehicle in question which was shown to have been purchased from M/s Rohan Auto Riders Pvt. Ltd. stood in the name of one Sunandan Baliarsingh, who claimed to have disposed it of in favour of opposite party No.2 which was sought to be proved by an affidavit on the strength of which it was interimly released by the learned court below on an application under Section 457 Cr.P.C.

3. Mr.J.Sahoo, learned Senior Advocate appearing for the petitioner contends that in the facts and circumstances of the case, the court below fell into error in taking cognizance of the offences without insisting for sanction which is statutorily required in view of Section 197 Cr.P.C. before criminally prosecuting a public servant. While contending so, a decision of the Apex Court in the case of **D. Devaraja Vrs. Owais Sabeer Hussain** decided in **Criminal Appeal No.458 of 2020** by a judgment dated 18th June, 2020 which is with regard to sanction is referred to. Apart from above, the decisions in **Satyabrata Lenka Vrs. State of Orissa and others MANU/OR/0421/2017** and **Sangram Keshari Behera Vrs. Niladri Dhir 2012 SCC Online Ori 316** are also placed reliance on while advancing a case for sanction. Thus, it is contended that the learned

court below could not have taken cognizance of the offences without demanding sanction and hence, the impugned order under Annexure-1 is unsustainable in law.

4. Mr. Muduli, learned AGA justified the decision of the learned court below whereby cognizance of the alleged offences was taken. Whereas the learned counsel appearing for opposite party No.2 contended that the conduct of the petitioner was unbecoming of a public servant and he committed serious illegality by making seizure of the vehicle without any justification and therefore, no sanction was required. While contending so, Mr. Das, learned counsel for the opposite party No.2 cited the decisions, such as, **Sambhoo Nath Misra Vrs. State of U.P. and others 1997(2) SCR 1139** and **Balbir Singh Delhi Administration Vrs. D.N. Kadian, M.M. Delhi and Another AIR 1986 SC 345**.

5. Section 197 Cr.P.C. stipulates that when a public servant 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 of the Government. It does mean that a public servant not removable from his office save by or with the sanction of the Government cannot be criminally prosecuted unless a sanction under Section 197 Cr.P.C. is obtained provided the mischief which is alleged against him was committed while he was acting or purporting to act in the discharge of official duty. The law in this regard is well settled. If the act complained of has any nexus with the official duty, in that case, the public servant cannot be subjected to prosecution without sanction of the Government. The Apex Court in **D. Devaraja** (Supra) elaborately discussed about the sanction referring to numbers of its earlier judgment and finally concluded that the object of Section 197 Cr.P.C. is to prevent public servants from being subjected to vexatious proceedings for

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the acts which are done in discharge of official duty or committed in excess of such duty or authority.

6. In the case at hand, admittedly, seizure of a vehicle was shown which was carried out by the petitioner and other police officials and according to opposite party No.2, it could not have been held in absence of a search warrant and registration of a case and such seizure was accomplished in order to wreck vengeance since he had lodged a complaint against said Bijaya Kumar Mohapatra, who was allegedly responsible for selling fake and misbranded medicine to him. The question is, under the circumstances and in relation to seizure of a vehicle claimed to have been owned by opposite party No.2, after entertaining the complaint at the latter's behest, whether the learned court below was to insist upon for a sanction under Section 197 Cr.P.C. before taking cognizance of the offences against the petitioner?

7. The opposite party No.2 alleged illegality against the petitioner for having seized the vehicle and detained it as a result of which he was humiliated and further sustained pecuniary loss. According to opposite party No.2, the petitioner misused the authority and even ill-treated and abused him during the incident of seizure. There is no denial to the fact that the petitioner seized the vehicle in or from the possession of opposite party No.2. While dealing with a case of misappropriation of public fund, the Apex Court in the case of **Sambhoo Nath Misra** (supra) held that it is not the official duty of a Government servant to fabricate record and misappropriate public funds in furtherance of or in the discharge of official duty rather the official position enables him to misuse the authority and such act cannot be said to be integrally connected or inseparably inter-linked with the crime committed in course of the transaction. In **Balbir Singh** (supra), the Apex Court summed up and held that if the act complained has no nexus, reasonable connection or

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relevant to the official act or duty of such public servant done or purported to be done in discharge of an official duty and is otherwise illegal, unlawful or in the nature of offence, in that case, the public servant cannot have shelter under Section 197 Cr.P.C. In the aforesaid decision, considering the facts of the case, the Apex Court observed that protection under Section 197 Cr.P.C. cannot be extended to the accused persons since the mischief was having no reasonable nexus or relevance to the official act or duty. Referring to the decisions of **Samboo Nath Misra** and **Balbir Singh** *ibid*, Mr. Das, learned counsel for opposite party No.2 contended that in the present case as well considering the circumstances leading to the seizure of vehicle which was without any legal basis, no sanction was required and rightly therefore, the learned court below did not demand for sanction and proceeded to take cognizance of the offences vis-à-vis the petitioner and others.

8. While heavily relying upon the decision of **D. Devaraja** (*supra*), it is contended by Mr. Sahoo, learned Senior Advocate that since the alleged overt act or mischief said to have been committed while discharging official duty, the learned court below could have extended the benefit of Section 197 Cr.P.C, however, it did not do so and illegally proceeded to take cognizance of the offences. In **Sangram Keshari Behera** (*supra*), since the police officials were on duty in order to execute warrants of arrest whereafter the complaint was filed by claiming police excess, this Court held that since it was in due discharge of official duty, sanction was necessary and consequently quashed the order of cognizance. In **Satyabrata Lenka** (*supra*), it was held that before taking cognizance of the offences against public servants enquiry has to be conducted to ascertain as to whether the person against whom the complaint was filed was while discharging official duty at the time of alleged incident. By taking note of the above decisions, the Court is to

decide as to if the learned court below was required to demand for sanction under Section 197 Cr.P.C. before proceeding against the petitioner at the time of considering whether to take cognizance of the offences or otherwise.

9. If the seizure of the vehicle has been carried out in due discharge of official duty, in that case, the learned court below was to demand sanction under Section 197 Cr.P.C. If it is otherwise and that the petitioner did mischief and illegally seized the vehicle by misutilising the authority and official position and committed the excess in the colour of discharging duty, no sanction would be required. The Apex Court in **D. Devaraja** (supra) while dealing with a matter concerning sanction held and observed that an application under Section 482 Cr.P.C. is maintainable to quash proceedings which are ex facie bad for want of sanction, frivolous or in abuse of process of court. It has been further held therein that to decide whether sanction is necessary, the test is whether the act is totally unconnected with the official duty or if there is a reasonable nexus with the official duty and in that case the allegation was with regard to gross mischief committed during custodial interrogation. The Supreme Court in the above case concluded that if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if he has exceeded the scope of his powers and/or acted beyond the four corners of law. In the case at hand, the seizure of the vehicle was carried out by the petitioner which is alleged to be on the instigation of a person with whom opposite party No.2 was not pulling on well and in good terms and that some excess was committed by him which in the considered opinion of the Court may have amounted to commission of offences, however, basically connected to the official duty or having nexus with the investigation and hence, sanction should have been insisted upon before proceeding with

the complaint which is a view derived from the ratio of the Apex Court in **D. Devaraja** *ibid*.

10. It is ordered accordingly.

11. In the result, the petition stands allowed. As a necessary corollary, the impugned order of cognizance dated 16th April, 2011 under Annexure-1 passed in ICC Case No.20 of 2009 is hereby quashed with a direction to the learned J.M.F.C., Kodala, Ganjam to demand sanction under Section 197 Cr.P.C. as against the petitioner before proceeding with the complaint and taking cognizance of the offences.



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