

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1888 of 2015

AFR

Satyanarayan Dash

....

Petitioner

Mr. Smruti R. Mohapatra, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. Manoranjan Mishra, ASC

CORAM:

JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT: 01.11.2022

1. The petitioner has invoked Section 482 Cr.P.C. while assailing the order of cognizance dated 23rd March, 2015 passed in U.I. Case No.61 of 2015 by the learned S.D.J.M., Athagarh while disposing of an application filed by him to reject the Prosecution Report (PR) on the grounds inter alia that it is not tenable in law and hence, liable to be interfered with.

2. In fact, the prosecution case in brief is that Gurudijhatia P.S. Case No.19 dated 16th February, 2011 was registered under Sections 25 and 27 of Arms Act which was subsequently turned to Section 395 IPC and the action was on the strength of a report lodged by the informant with regard to an incident of robbery. In that connection, after the PR was submitted, the petitioner alleged that the allegations to be false and are based on previous ill-feeling. The petitioner appears to have moved the learned court below due to absence of sanction under Section 197 Cr.P.C. and on the ground that the PR could not have been entertained in view of Section 195(1)(b)(i) Cr.P.C. But the learned S.D.J.M., Athagarh after hearing the parties reached at a conclusion that sanction under Section 197 Cr.P.C. is not required in so far as the facts of the case are concerned, where the allegation is of

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fabrication of records and while concluding so, a decision of the Apex Court in the case of **Rajiv Ranjan Vrs. R. Bijaya Kumar 2014 (4) Crimes 328** was referred to. Adverting to the contention of the petitioner regarding the immunity enjoyed under Section 197 Cr.P.C., the learned court below reached at a decision that such provision would not be attracted in case where a document is alleged to have been falsely created prior to its production or submitted in evidence and in that respect, a judgment of the Supreme Court in the case of **Iqbal Singh Marwah and another Vrs. Meenakshi Marwah (2005) 4 SCC 370** was placed reliance on. Being aggrieved of the aforesaid finding of the learned court below, the petitioner has knocked the portals of this Court with a prayer to quash the impugned order of cognizance under Annexure-3.

3. Mr. Mohapatra, learned counsel for the petitioner referred to the following decisions on the point of sanction, such as, **Md. Iqbal Ahmed Vrs. State of Andhra Pradesh: AIR 1979 SC 677; Jayasingh Vrs. K.K. Velayutham & another: (2006) 34 OCR (SC) 517; Dr. Manmath Kumar Behera Vrs. State of Orissa: (2002) 22 OCR 560; and Raj Kishore Swain and another Vrs. Smt. Ranjana Moharana:(2003) 24 OCR 535** and finally the judgment of the Apex Court in **State of Haryana and others Vrs. Ch. Bhajanlal and others AIR 1992 SC 604** which is to the quashing of proceedings exercising jurisdiction under Section 482 Cr.P.C. on the ground that even if the facts of the PR stand uncontroverted, no prima facie case is made out against the petitioner. As regards, prosecution vis-a-vis compliance of the provisions of Section 195 Cr.P.C., Mr.Mohapatra referred to **Kailash Mangal Vrs. Ramesh Chand: 2015 (61) OCR (SC) 555, Narendra Kumar Srivastava Vrs. CRLMC No.1888 of 2015**

State of Bihar and others: MANU/SC/0135/2019; and Central Bureau of Investigation, Lucknow, U.P. Vrs. Indra Bhushan Singh and others: (2014) 59 OCR (SC) 183. It is contended that neither for the alleged overt act by the petitioner being a Government servant any sanction was called for by the learned court below nor Section 195 Cr.P.C. was adhered to and complied with despite an objection raised and therefore, the impugned order under Annxure-3 cannot sustained in law.

4. In the present case, the PR was submitted by the IIC, Gurudijhatia P.S. for taking an action against the petitioner and the other I.O. in Gurudijhatia P.S. Case No.26 dated 25th February, 2011 for having created false records to implicate and falsely entangle owner of a vehicle bearing registration No. UP 32 CT 5365 claiming it to be involved in the commission of a crime and for a criminal action to penalize them under Section 193 read with Section 34 IPC. After the PR was submitted, the petitioner moved the learned court below to reject the same in absence of sanction in terms of Section 197 Cr.P.C. and in view of Section 195(1)(b)(i) Cr.P.C. and for not following the procedure as prescribed in law with reference to Section 340 Cr.P.C.

5. Mr. Mohapatra, learned counsel for the petitioner contends that before initiation of an action under Section 193 I.P.C., there has to be compliance of Section 195(1)(b)(i) Cr.P.C. and the complaint has to be by the court concerned in view of sub-section (3) thereof. The objection on such ground was rejected by the court below concluding that Section 195(1)(b)(i) Cr.P.C. does not create any bar for taking cognizance under Section 193 I.P.C. since

it has no application to the facts of the case by referring to the judgment of the Apex Court in **Iqbal Singh Marwah** (supra).

6. As to the applicability of Section 195(i)(b)(ii) Cr.P.C., the Supreme Court in the aforesaid decision concluded that the action under Section 193 I.P.C may be initiated by the court where the proceeding is pending on a satisfaction being arrived at that there has been fabrication of records while the same was in its custody. For better appreciation, the relevant excerpt of the judgment in **Iqbal Singh Marwah** (supra) is reproduced herein below:

“25. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in *custodia legis*.”

26. In the present case, the will has been produced in the Court subsequently. It is nobody's case that any offence as enumerated in Section 195(b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b)(ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference.”

7. In the case at hand, the IIC, Gurudijhatia P.S. initiated the action and submitted the PR against the petitioner before the learned court below with the allegation that the latter and another I.O. falsely involved the alleged vehicle in a case and in CRLMC No.1888 of 2015

that connection, prepared a seizure list, etc. The details of the overt acts and mischief allegedly committed by the petitioner and the other I.O. have been described in the PR with a request to the court below to take cognizance of offence under Section 193 read with 34 IPC, whereupon, the impugned order under Annexure-3 was finally passed after rejecting the application moved from the side of the petitioner.

8. If an offence under Section 193 IPC is committed and it is alleged to have been or in relation to any proceeding of any court, then as per Section 195(1)(b)(i) Cr.P.C., a complaint can only be entertained, if filed by that court or a subordinate court and in view of Sub-Section (3) thereof, as the term 'court' would mean a criminal court. However, in the present case, the petitioner allegedly prepared a seizure and other police papers in connection with a case registered at Gurudijhatia P.S. and hence, it was prior to registration of the case vis-à-vis the incident involving the alleged vehicle. Therefore, in the considered view of the Court, the condition appearing in Section 195(1)(b)(i) Cr.P.C. shall apply if any such offence punishable under Section 193 IPC is committed while the document produced or submitted in evidence in a proceeding while it was in custody of the court and in that case, court shall file a complaint but it shall have no application to a situation in which the document is either manufactured or fabricated prior to its production or given in evidence. The above is the settled position of law as laid down by the Apex Court in **Iqbal Singh Marwah** *ibid*. Section 195 Cr.P.C. shall have no application at all since the petitioner and the other I.O. of the case said to have falsely involved a vehicle and prepared police records which was prior to its production before

the court of learned S.D.J.M., Athagarh. The conclusion which has been reached at by the learned court below in this regard while rejecting the plea of the petitioner is therefore absolutely justified and in accordance with law. Mr. Mohapatra cited the decision in the case of **Kailash Mangal** (supra). Said decision is inapplicable to the present case for the fact that a false affidavit was filed before the court and alleging that offence under Section 193 IPC was committed, a private complaint was filed and under such circumstances of the case, the Apex Court concluded that the court ought to have initiated a criminal action instead in view of the bar contained in Section 195(1)(b)(i) Cr.P.C.

9. With regard to sanction under Section 197 Cr.P.C. is concerned, admittedly the alleged mischief was committed during and in course of discharging official duty. However, the question is whether the court below was required to demand sanction as claimed by the petitioner? The learned court below held that the nature of overt act or mischief required no sanction and while concluding so, **Rajib Ranjan** case was referred to.

10. Law is well settled that sanction under Section 197 Cr.P.C. is to be insisted upon if an offence is committed by a public servant while acting or purporting to act in the discharge of his official duty. The object of Section 197 Cr.P.C. is loud and clear to the effect that no public servant should be subjected to unnecessary harassment on account of vexatious proceeding. If such a demand for sanction is made, the court must have to ensure that the alleged mischief was whether to be having any nexus with the discharge of the public duty. Before inviting Section 197 Cr.P.C. the court is to satisfy the existence of a nexus between the duty

lawfully enjoined and the offending act which is sine qua non. If it can reasonably be claimed by a public servant that what he did was while acting or discharging his duty, in such a case, a sanction under Section 197 Cr.P.C. may have to be asked for. It is not that in the guise of discharging duty, a public servant is to commit a mischief and escape by taking a plea that sanction was necessary. In the instant case, the petitioner was one of the I.Os and the allegation which has been made against him is that he and the other IO falsely implicated and involved a vehicle and registered a case. As a layman's point of view, if the allegation is accepted at its face value, such an act cannot be said to be a part of the official duty of the petitioner. It is made to suggest that an enquiry was conducted and finally after the orders of the superior authority, the PR was submitted. In fact, in a recent decision, the Apex Court in **D. Devaraja Vrs. Owais Sabeer Hussain in Criminal Appeal No.458 of 2020** arising out of **SLP (CRL.) No. 1882 of 2018** 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 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

instant case, the petitioner was involved in an investigation and alleged of having committed the mischief. An enquiry appears to have been conducted with the conclusion leading to the submission of the PR. The reasons assigned are that the petitioner did engage in some kind of a mischief to involve the vehicle but the conclusion is based on irregularities committed during its seizure and absence of materials to prove such seizure and the crime. The actions are alleged to be fraudulent due to absence of evidence to prove the crime but are basically connected to the investigation which in the considered view of the Court is a case where sanction should be insisted upon a view which is subscribed from the ratio of the Apex Court in **D.Devaraja** (supra). With the orders of the higher up and on the ground that there was an enquiry before submission of the PR would not serve the purpose and cannot replace and be a substitute to a statutory sanction.

11. Accordingly, it is ordered.

12. In the result, the petition stands allowed. As a logical sequitur, the order of cognizance dated 23rd March, 2015 passed in U.I. Case No.61 of 2015 is hereby quashed with a direction to the learned S.D.J.M., Athagarh to demand for a sanction vis-à-vis the petitioner before proceeding with the PR and taking cognizance of the offences.

(R.K. Pattanaik)
Judge