

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3693 of 2013

Smt. Sumati Nayak

....
Petitioner
Mr. P.K. Mishra, Advocate

-Versus-

State of Odisha and another

....
Opposite Parties
Mr. P.K. Muduli, AGA

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT : 19.09.2022

1. The petitioner by invoking inherent jurisdiction under Section 482 Cr.P.C. has questioned the correctness, legality and judicial property of the impugned order dated 2nd December, 2013 passed by the learned J.M.F.C., Narsinghpur in connection with ICC Case No.10 of 2013 for having not taken cognizance of the alleged offences instead demanding sanction in terms of Section 197 Cr.P.C. on the grounds *inter alia* that the same is not tenable in law and thus, liable to be set aside.

2. Heard counsel for the petitioner and learned AGA for the State. None appeared on behalf of opposite party No.2.

3. Learned counsel for the petitioner submits that the court below fell into serious error while calling for sanction with the conclusion that it is necessary in order to criminally prosecute opposite party No.2 despite the fact that the allegations are to the effect that she was misbehaved and manhandled by him during and in course of the alleged incident. It is further contended that such treatment meted out to the petitioner at the instance of opposite party No.2

was no part of official duty and therefore, sanction is not required but then, the learned court below grossly erred while asking for it. While contending so, Mr. Mishra relied upon the following decisions, such as, **Keshaba Jena Vrs. Pradipta Kishore Das and others:** (1989) 2 OCR 34; **Sri Nabaghana Patalasingh Vrs. Smt. Bhanumati Padhiari:** 2006 (I) OLR 330; **Choudhury Parveen Sultana Vrs. State of West Bengal and Another:** (2009) 42 OCR (SC) 535; and **Rabindranath Satpathy Vrs. Hina Sethy:** (2009) 44 OCR 728.

4. Despite service of summons, opposite party No.2 is left unrepresented. The learned AGA, however, sought to defend the impugned order under Annexure-3 while contending that since the learned court below arrived at a conclusion that the alleged incident happened at a time when opposite party No.2 was on duty, no error or wrong was committed as a result while demanding sanction which is a statutory mandate as per Section 197 Cr.P.C.

5. In fact, the petitioner as the complainant lodged the complaint registered as ICC No.10 of 2013, wherein, she described the details of the alleged incident and the nature of overt act and mischief committed by opposite party No.2. According to the petitioner, the alleged occurrence took place on 16th January, 2013 at a time when she had gone to the P.S. along with her husband to report an incident with the police where opposite party No.2 being the OIC abused her in obscene language and two days later, when they again visited the PS, after having obtained a copy of the FIR, when sought for a clarification, opposite party No.2 lost his temper and assaulted her by blows as a result of which she fell on the ground but was save due to the presence of her son and husband,

CRLMC No.3693 of 2013

whereafter, while leaving the spot was threatened with dire consequences to get her killed. With the above allegations, when the complaint was filed, the initial statement of the petitioner was recorded and enquiry under Section 202 Cr.P.C was conducted and finally, the learned court below passed the impugned order under Annexure-3 which is under challenge.

6. Admittedly, the incident took place at the PS which is revealed from the complaint itself. The learned court below was of the opinion that since opposite party No.2 was on duty being the OIC of the P.S and the alleged incident having taken place at that point of time, sanction under Section 197 Cr.P.C. to be necessary. Mr. Mishra, learned counsel for the petitioner submits that it was no part of official duty of opposite party No.2 to abuse and assault the petitioner and threaten her even though he was at the PS and hence, for such an overt act, sanction is not necessary which could not be appreciated by the learned court below.

7. As per Section 197 Cr.P.C., no court shall take cognizance of any such offence with the previous sanction having been obtained from the Government when a public servant or Magistrate or Judge alleged to have committed an offence while acting or purporting to act in the discharge of his official duty. In other words, if a public servant is on duty and while discharging it, any overt act is committed by him which is alleged to be an offence punishable under law, he shall be protected against criminal prosecution unless there is a previous sanction obtained from the Government. The alleged overt act or so called mischief must have been committed while performing an official duty and has been a part of such duty and only under such circumstances, immunity is enjoyed by the public servant which is what statutorily mandated under Section CRLMC No.3693 of 2013

197 Cr.P.C. If the act alleged to be an offence is no part of such official duty or the public servant cannot claim it to be a part of the duty to be performed, in that case, he cannot have protection under Section 197 Cr.P.C. The question is, whether, in the facts and circumstances of the case, for the alleged overt act committed by opposite party No.2, any sanction was really required?

8. On the date of occurrence, the petitioner had been to the PS to report an incident dated 16th January, 2013 and for that, an FIR was lodged but opposite party No.2 kept them waiting till 5 PM in the evening and allegedly did not take any interest rather suggested them to return to which when an objection was raised, she was abused and was instructed to visit the PS after two days and when they went to the PS again, a copy of the FIR was handed over to the petitioner wherein the incident was dated 18th January, 2013 instead of 16th January, 2013 and when the same was confronted to opposite party No.2, the latter got enraged and assaulted her with kick blows. The above is precisely the allegation contained in the complaint and also reproduced before the learned court below by the petitioner.

9. In **Keshab Jena** (supra), this Court concluded that no sanction is necessary in a case where a police officer assaults inside the PS even during investigation or abuses a person. It has been held therein that the accused has no *locus standi* to participate in an enquiry and that case is to be judged exclusively from the point of view of the complainant and while referring to a decision in the case of **Sarbeswar Behera Vrs. Ranghadhar Mohanty** decided in Criminal Revision Nos.132 and 135 of 1984 disposed of 22nd July, 1988 lastly concluded that such an act of police officer even during the investigation is not an action committed in discharge of any duty

CRLMC No.3693 of 2013

which can enjoy immunity from prosecution without a sanction of the competent authority. In **Nabaghana Patalsingh** (supra), a similar view was expressed by this Court, wherein, it was held that protection would be available under Section 197 Cr.P.C. or not entirely depends on the facts of each particular case and no case can be equated with another unless the facts are similar and the Court is to ensure that such act of the accused must have a nexus with the official duty sought to be discharged and in the facts of the said case concluded that use of abusive words to a person who visited the PS to lodge an FIR cannot be considered as any part of official duty and therefore, no protection under Section 197 Cr.P.C. can be claimed. Similarly, in **Rabindranath Sathpathy** (supra), it is held that the OIC of the PS, who abused the informant and did not entertain the FIR has not only omitted or neglected to perform his official duty but thereby facilitated an offender to escape from the criminal liability and hence, benefit of Section 197 Cr.P.C. cannot be pressed in to service as the alleged act by no stretch of imagination be considered as official duty. The Apex Court in **Choudhury Parveen Sultana** (supra) held and observed that if the authority vested in a public servant is misused for doing things which are not otherwise permitted under law, such acts cannot claim the protection under Section 197 Cr.P.C. and have to be considered *de hors* the duties which a public servant required to discharge or perform. In the aforesaid case, the investigating officer allegedly committed acts of extortion and criminal intimidation while conducting investigation and against the said backdrop, the Supreme Court concluded that it was no part of the duty of the IO to threaten the complainant or her husband to force them to withdraw the complaint, hence, protection of Section 197 Cr.P.C. would not be available. As to the instant case, the petitioner had

CRLMC No.3693 of 2013

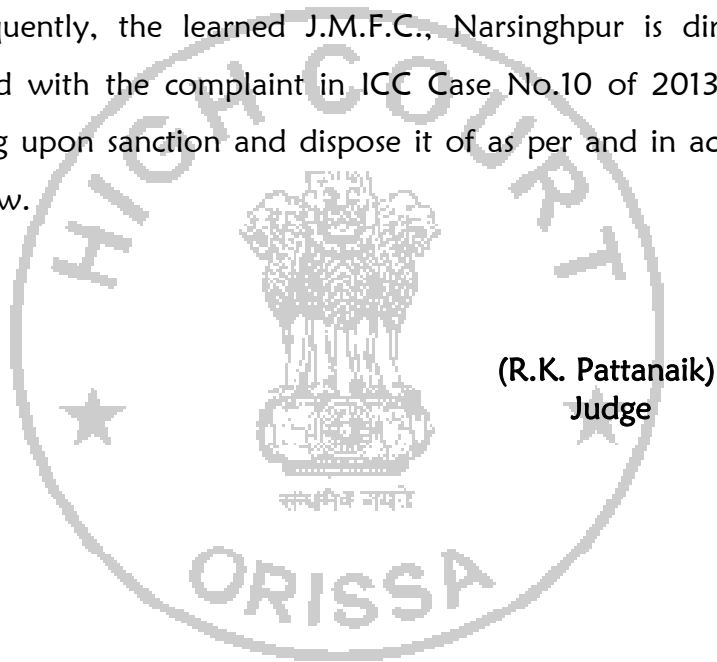
gone to the PS to lodge a report and in fact, the FIR was lodged and when no interest was shown by opposite party No.2 and she was told to visit the PS two days after and there was abused and then on the subsequent occasion, she was again misbehaved and assaulted besides being intimidated which in the considered view of the Court cannot be said to be an act forming part of any one's official duty. The protection which is provided to public servants under Section 197 Cr.P.C. primarily aimed to guard them against false prosecutions but certainly not protecting unlawful acts perpetuated in the garb of discharging official duty. The alleged act must have been committed while discharging official duty lawfully and not otherwise and only in such cases, claim for protection under Section 197 Cr.P.C. is available. The Apex Court in **Choudhury Parveen Sultana** referring to an earlier decision in **Bhaghaban Prasad Srivastava Vrs. N.P. Misra** reported in (1971) 1 SCR 317 highlighted upon and underlined the object of Section 197 Cr.P.C. which is to enable the authority to scrutinize the allegation made against a public servant to shield him against vexatious or false prosecution initiated with the object of causing embarrassment and harassment, however, it was concluded that such protection would not be available when the authority vested in public servant is misused. As far as opposite party No.2 is concerned without being concerned as to its truthfulness or otherwise of the allegations which can only be gone into and examined during enquiry and trial, since it was directed against him while on duty but the overt acts not being a part of official duty so as to abuse, assault and threaten the petitioner and considering the same, the learned court below could not have reached at a decision that sanction under Section 197 Cr.P.C. to be necessary. In other words, considering the allegations in the complaint and the evidence

CRLMC No.3693 of 2013

received during enquiry, it could not have been held by the learned court below that sanction was necessary in order to criminally prosecute opposite party No.2.

10. Accordingly, it is ordered.

11. In the result, the petition under Section 482 Cr.P.C. stands allowed. As a necessary corollary, the impugned order dated 2nd December, 2013 under Annexure-3 passed by the learned J.M.F.C. Narsinghpur in ICC No.10 of 2013 is hereby set aside. Consequently, the learned J.M.F.C., Narsinghpur is directed to proceed with the complaint in ICC Case No.10 of 2013 without insisting upon sanction and dispose it of as per and in accordance with law.



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