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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.6452 of 2014

Anand Chandra Patra

....

Petitioner

Mr. Jagabandhu Sahoo, Advocate

-versus-

State of Odisha

....

Opp. Party

Mrs. S. Patnaik, AGA

CORAM:

JUSTICE CHITTARANJAN DASH

DATE OF JUDGMENT : 23.12.2022

Chittaranjan Dash, J

1. Heard learned counsel for the parties.
2. By means of this application, the Petitioner (the Inspector In Charge) seeks to quash the order dated 10th November, 2014 passed by the S.D.J.M., Baliguda in I.C.C. No.23 of 2014.
3. The background facts of the case are that the complainant in 1 C.C No. 23 of 2014 visited K. Nuagaon Police Station on 14th August, 2014 at the noon hour for the purpose of lodging a report regarding missing of his buffaloes. It is alleged that the Petitioner being the Inspector In Charge of the Police Station was present. When the complainant tendered the report, the Inspector In Charge, without accepting or even going through the contents of the FIR scolded the Complainant (Opposite Party No.2), in obscene words and filthy languages in a public place causing annoyance to him, he being a respected person of the society. The utterance of filthy language and scolding by the Inspector in Charge attributing to his caste and none acceptance of the report

compelled him to bring it to the notice of the higher authority. As the action of the complainant did not yield any result, he filed the complaint. The learned court below upon initial examination of the complainant and witnesses and the enquiry conducted U/s. 202 Cr.P.C. satisfied as to the existence of material to proceed against the Petitioner and took cognizance in the offence U/s. 294/506 IPC read with offences U/s. 3(1)(i) (x) of the SC & ST (PA) Act and issued process against the Petitioner. Being aggrieved by the said order passed by the learned court below in taking cognizance, the Petitioner moved in the present as mentioned above.

4. It is submitted by Mr. Jagabandhu Sahoo, learned counsel for the Petitioner, *inter alia*, that the learned court below erred in law by taking cognizance not being conscious of the position of law as regards the sanction of prosecution enumerated U/s.197 Cr.P.C. which the court ought to have gone into before taking cognizance against a public servant inasmuch as the very complaint candidly reveals that the Petitioner being the Inspector in Charge of the Police Station was present in the Police Station and was discharging his official duty allegedly to have committed the overt act.

5. It is further submitted by the learned counsel for the Petitioner that the issuance of process against the present Petitioner without a sanction under Section 197 Cr.P.C. is illegal and cannot sustain in the eye of law. He relied upon the decision of the Apex Court in the case of ***Om Prakash and others v. State of Jharkhand to the Secretary, Department of Home, Ranchi*** reported in (2012) 12 SCC 72, in the case of ***Sankarsan Maitra v. Sadhana Das and others***, reported in (2006) 4

SCC 584 and in the case of ***D. Debaraja v. Owais Sabber Hussain in Criminal Appeal No.458 of 2020.***

6. Despite service of notice, the Informant, Opposite Party No.2 though represented by his counsel found not present on call.

7. Learned ASC, on the other hand, contended that the act alleged and the overt act shown dehors the official duty of a public servant could not have been insisted upon for a sanction under Section 197 Cr.P.C. and has rightly been proceeded and the order impugned in taking cognizance is, therefore, just and legal.

8. Perusal of the averments made in the complaint emerges that at the time of visit of the complainant, the Petitioner was very much present in the Police Station on duty and the incident took place in the premises of the Police Station. The alleged act of the Petitioner admittedly is one while he was discharging his duty which is not in dispute. The sole question remained scrutiny is on the face of the act complained required for the court below to insist the requirement of sanction for prosecution U/s. 197 Cr.P.C before issuance of process.

9. The Allahabad High Court in ***Umesh Chandra vs State Of U.P. And Another on 14 January, 2020*** while dealing with matter similar to the one before this court held 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:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any

sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

11. Section 197 Cr.P.C. has referred to two terms. One is the "public servant" and another "offence".

12. The term "offence" has been defined in Section 2(n) of Cr.P.C. and Section 40 IPC and both may be reproduced as under:

"(n) "Offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle-trespass Act, 1891 (1 of 1871)."

"40. "Offence"-Except in the Chapters and Sections mentioned in clauses 2 and 3 of this Section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, Chapter V-A and in the following sections, namely, Sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in Sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable

under such law with imprisonment for a term of six months or upwards, whether with or without fine."

13. Term "public servant" has not been defined in Cr.P.C. but is defined in Section 21 IPC. I may refer the definition of "public servant" at a later stage if it is necessary.

14. Section 197 Cr.P.C. was also available in Code of Criminal Procedure, 1898. It came up for consideration before Bombay High Court in Hanumant Shrinivas Kulkarni Versus Emperor, (31) 1930 Cr.L.J. 353. Court observed that object of sanction is to guard against vexatious proceedings against public servants and to secure the well considered opinion of a superior authority before their prosecution.

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25. The object of the legislature for making provision pertaining to sanction seems to be clear. Where a public servant is prosecuted for an offence, which challenges his honesty and integrity, the issue in such a case is not only between the prosecutor and the offender but the State is also vitally concerned in it as it affects the morale of the public servants and also the administrative interests of the State. For these reasons, the discretion to prosecute appears to be taken away from the prosecuting agency and is vested in departmental authorities, i.e., the employer probably with the view that they may assess and weigh the accusation in a far more dispassionate and responsible manner. The ultimate justification is public interest. It, however, does not condone the commission of an offence by a public servant or to use it as shield to escape from legal proceedings on mere technicalities.

26. The observations of Supreme Court in State of Himachal Pradesh Vs. M.P. Gupta (supra); State of Orissa and others Vs. Ganesh Chandra Jew (supra); and, Rakesh Kumar Mishra Versus State of Bihar (supra) clearly shows that protection provided in Section 197 is for "responsible public servants" who are mainly involved in superior duties including policy decision so that such superior officials may not be harassed in taking policy decision etc. This protection is not available to every public servant. When State itself has made a distinction based on degree of responsibility, nature of duties, nature of functions etc., and that is why the public servants who are removal with sanction of Government and those who are not, are treated

in a two different classes, it cannot be said that distinction is artificial and has no nexus to the object sought to be achieved. The very distinction in the category of two government servants, namely, those who are supposed to take responsible decisions and those who are not, shows that neither it is artificial nor irrational nor lack nexus to the object sought to be achieved.

10. In the observation of the Apex Court in ***D. Devaraja v. Owais Sabeer Hussain in Criminal Appeal No.458 of 2020;***

“8. The short question involved in this appeal is, whether the learned Magistrate could, at all, have taken cognizance against the appellant, in the private complaint being P.C.R No.17214 of 2013, in the absence of sanction under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, 1963, as amended by the Karnataka Police (Amendment) Act, 2013, and if not, whether the High Court should have quashed the impugned order of the Magistrate concerned, instead of remitting the complaint to the Magistrate concerned and requiring the accused appellant to appear before him and file an application for discharge.

32. The object of sanction for prosecution, whether under Section 197 of the Code of Criminal Procedure, or under Section 170 of the Karnataka Police Act, is to protect a public servant/police officer discharging official duties and functions from harassment by initiation of frivolous retaliatory criminal proceedings. As held by a Constitution Bench of this Court in *Matajog Dobey v. H.C. Bhari*¹³ held:

“...Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard..... There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction...”

33. In *Pukhraj v. State of Rajasthan* and another¹⁴ this Court held:-

“2. ..While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that 13 AIR 1956 SC 44 14 (1973) 2 SCC 701 the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the ‘capacity in which the act is performed’, ‘cloak of office’ and ‘professed exercise of the office’ may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty...”

36. In Ganesh Chandra Jew (supra) this Court held:

“7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has

certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty.”(emphasis supplied)

37. In *State of Orissa v. Ganesh Chandra Jew* (supra) this Court interpreted the use of the expression “official duty” to imply that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. Section 197 of the Code of Criminal Procedure does not extend its protective cover to every act or omission done by a public servant while in service. The scope of operation of the Section is restricted to only those acts or omissions which are done by a public servant in discharge of official duty.

39. The scope of Section 197 of the old Code of Criminal Procedure, was also considered In *P. Arulswami v. State of Madras* 20 where this Court held:

“...It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted.” If the act is totally unconnected with the official duty, there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable....” 20 AIR 1967 SC 776

40. In *B. Saha and Others v. M.S. Kochar*²¹ this Court held:

“18. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.”

41. In *Virupaxappa Veerappa Kadampur v. State of Mysore* (supra) cited by Mr. Poovayya, a three Judge Bench of this Court had, in the context of Section 161 of the Bombay Police Act, 1951, which is similar to Section 170 of the Karnataka Police Act, interpreted the phrase “under colour of duty” to mean “acts done under the cloak of duty, even though not by virtue of the duty”.

45. In *Om Prakash and others v. State of Jharkhand* and another (supra) this Court, after referring to various decisions, pertaining to the police excess, explained the scope of protection under Section 197 of the Code of Criminal Procedure as follows:

“32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (*K. Satwant Singh* [AIR 1960 SC 266]). The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection (*Ganesh Chandra Jew* [(2004) 8 SCC 40]). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be

inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 (1) of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood.”(emphasis supplied)

46. In *Sankaran Moitra v. Sadhna Das and another* 22 the majority referred to *H.H.B. Gill v. R23 H.H.B. Gill v. Emperor* 24; *Shreekantiah Ramyya Munippali v. State of Bombay* 25; *Amrik Singh v. State of Pepsu* 26; *Matajog Dobey v. H.C. Bhari* 27; *Pukhraj v. State of Rajasthan* 28; *B. Saha and others v. M.S. Kochar* 29; *Bakhshish Singh Brar v. Gurmej Kaur* 30; *Rizwan Ahmed Javed Shaikh and others v. Jammal Patel and others* 31; and held :

“25. The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197 (1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197 (1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in (2001) 5 SCC 7 that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197 (1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197 (1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of learned counsel for the

complainant that this is an eminently fit case for grant of such sanction.”

54. In *D.T. Virupakshappa v. C. Subash* (supra), cited by Mr. Poovayya, the question raised by the appellant before this Court was, whether the learned Magistrate could not have taken cognizance of the alleged offence which was of police excess in connection with investigation of the criminal case, without sanction from the State Government under Section 197 of the Code of Criminal Procedure and whether the High Court should have quashed the proceedings on that ground alone.

55. This Court held that the whole allegation of police excess in connection with the investigation of the criminal case, was reasonably connected with the performance of the official duty of the appellant. The learned Magistrate could not have, therefore, taken cognizance of the case, without previous sanction of the State Government. This Court found that the High Court had missed this crucial point in passing the impugned order, dismissing the application of the concerned policeman under Section 482 of the Code of Criminal Procedure.

71. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of government sanction for initiation of criminal action against him.

77. It is well settled that an application under Section 482 of the Criminal Procedure Code is maintainable to quash proceedings which are *ex facie* bad for want of sanction, frivolous or in abuse of process of court. If, on the face of the complaint, the act alleged appears to have a reasonable relationship with official duty, where the criminal proceeding is apparently prompted by *mala fides* and instituted with ulterior motive, power under Section 482 of the Criminal Procedure Code would have to be exercised to quash the proceedings, to prevent abuse of process of court.

80. In our considered opinion, the High Court clearly erred in law in refusing to exercise its jurisdiction under Section 482 of the Criminal Procedure Code to set aside the order of the

Magistrate impugned taking cognizance of the complaint, after having held that it was a recognized principle of law that sanction was a legal requirement which empowers the Court to take Cognizance. The Court ought to have exercised its power to quash the complaint instead of remitting the appellant to an application under Section 245 of the Criminal Procedure Code to seek discharge.

11. The alleged overt act must have been committed while performing 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 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 to be 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 the Petitioner any sanction was required.

12. The core of the complaint as regards the excess in discharging of duty is obviously an area that requires adjudication. However, as apparently reveals from the complaint it is candidly mentioned that the Petitioner was present in the Police Station in discharge of his duties. Consequently, the duty officially assigned to the Petitioner and the protection given to the public servant in discharge of the duty could be applied inasmuch as a reasonable communication between the act and the performance of official duty has to be decided as it would deprive the public servant from the immunity given to it by the wisdom of the legislature.

13. The complaint also reveals a mention about an incident that took place on 15.10.2014 involving the Opp.Party Complainant in connection with an election issue. Once again, it was allegedly to have taken place

while the petitioner was discharging the law and order duty in due discharge of his official duty.

14. This Court in the matter of *Rabinarayan Nanda vrs. State of Orissa and another in 133(2022) CLT 742* took the view that insisting for sanction U/s.197 Cr.P.C was necessary even though the conduct of the Petitioner was outrageous and unbecoming of on the part of a police officer since he being at the PS was discharging his official function.

15. Although ordinarily the matter regarding accessibility of the act of public servant could be gathered in evidence, in the peculiarity of the case in hand, the learned court having not gone to the said aspect that the Petitioner was very much present in the Police Station and was discharging his official duty makes it imperative as a pre-requisite for the court to insist for sanction for prosecution under Section 197 Cr.P.C. by the appropriate authority before invoking jurisdiction and taking cognizance of the offence as otherwise it would be an abuse of process of law.

16. In the result, Petition U/s. 482 Cr.P.C filed by the Petitioner stands allowed. In corollary the impugned order of cognizance dated 10th November, 2014 passed by the S.D.J.M., Baliguda in I.C.C. No.23 of 2014 is hereby set aside. However, the court below is not precluded from proceeding against the petitioner in the event sanction under section 197 Cr.P.C is received.

(Chittaranjan Dash)
Judge

KC Bisoi /Secretary