

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1997 of 2013

Rabinarayan Nanda

.... Petitioner
Mr. P. Panigrahi, Advocate

-Versus-

State of Orissa and another

.... Opposite Parties
Mr. Sk. Zafrulla, ASC

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT: 04.07.2022

1. Instant petition under Section 482 Cr.P.C. is filed by the petitioner assailing the order of cognizance dated 8th October, 2005 (Annexure-2) passed in I.C.C. Case No.39 of 2011 by the learned J.M.F.C., Bhuban on the ground that the same is illegal, perverse and without any sanction being obtained in terms of Section 197 Cr.P.C. and therefore, it is liable to be interfered with and set aside.

2. As per the petitioner, the learned court below took cognizance of offences under Sections 294/325/326/342 and 506 IPC under Annexure-2 in a mechanical manner without application of judicial mind to the facts and circumstances of the case. It is claimed by the petitioner that the materials on record have not been duly examined by the learned court below, which passed the order of cognizance in a whimsical manner simply considering the statement of the complainant which reveals that the latter had been to the P.S. while the former was the IIC posted therein and was discharging his duty in official capacity and therefore, for the alleged incident sanction under Section 197 Cr.P.C. was necessary

and therefore, the impugned order under Annexure-2 is, therefore, liable to be quashed in the interest of justice.

3. A copy of the complaint filed by OP No.2 is at Annexure-1 describing therein the alleged occurrence dated 14th October, 2011 at about 10 am inside the PS. The circumstances under which the incident happened have been elaborately stated in Annexure-1. The alleged occurrence at the PS appears to have been preceded by an incident dated 12th October, 2011 during which one Jayguru Patra was said to have locked the premises of a local Math which was protested by OP No.2 and other members of said Math. In fact, according to OP No.2, he was called to the PS on 14th October, 2011 in connection with the above incident and thereafter, said to have been dragged into the PS Hazat and assaulted by the petitioner by means of a bamboo lathi. The manner in which the mischief was committed by the petitioner at the PS stands narrated in Annexure-1 alleging that the petitioner did not have any authority to treat him in the above manner. After the said incident, OP No.2 stated to have lodged the complaint before the learned court below which, thereafter, passed the order of cognizance under Annexure-2.

4. Heard Mr. P. Panigrahi, learned counsel for the petitioner and Mr. Sk. Zafrulla, learned ASC for OP No.1. The appearance of OP No.2 could not be ensured despite the Court's order dated 29th November, 2013. However, since the matter is pending from 2013 with an interim order dated 15th April, 2014 in M.C. No.1358 of 2013, it was decided by the Court to dispose of the same in presence of learned ASC.

5. Admittedly, a complaint was filed, whereupon, the learned court below took cognizance of the alleged offences vide Annexure-2 fixing the appearance of the petitioner on 20th

November, 2012. As it seems, NBW was issued against the petitioner in the aforesaid complaint case, whereafter, the interim order of protection in M.C. No.1358 of 2013 was passed by this Court staying its execution which was extended from time to time till 31st August, 2016. The learned court below, as it appears from Annexure-2, recorded the initial statement of OP No.2 and conducted enquiry as per Section 202 Cr.P.C. and then, considering the materials on record proceeded to take cognizance of the alleged offences and summoned the petitioner.

6. Mr. Panigrahi, learned counsel for the petitioner submits that before taking cognizance under Annexure-2, sanction under Section 197 Cr.P.C. was required which was not produced before the learned court below nor the court insisted upon it instead passed the order of cognizance vide Annexure-2 which is an illegality committed as a result and hence, it is not tenable in law. It is contended that the petitioner was on duty at the relevant point of time and even assuming that he committed the excess, the acts which by themselves held to be the offences punishable under law, in view of the requirement under Section 197 Cr.P.C., the learned court below ought not to have passed the impugned order under Annexure-2 without sanction being obtained. In support of such contention, a decision of this Court in **Basant Kishore Swain Vrs. Rama Chandra Mohapatra (1999) 17 OCR 369** has been referred to by Mr. Panigrahi. On the other hand, Mr. Sk. Zafrulla, learned ASC would submit that rightly the learned court below after considering the materials on record and the statement of OP No.2 and further enquiry held as per Section 202 Cr.P.C. which revealed the alleged mischief having been committed by the petitioner took cognizance of offences under Annexure-2 which is, therefore, not to be disturbed and in so far as the question of sanction is concerned, it could be examined during the trial.

7. In fact, a certified copy of the F.I.R. in connection with Bhuban P.S. Case No. 101(10) dated 15th October, 2011 registered under Sections 454/294/379 and 506 read with 34 IPC has been produced from the side of the petitioner vide Memo dated 6th May, 2015 which is stated to be with regard to the incident dated 13th October, 2011. The complainant appears to have mentioned in Annexure-1 about an incident dated 12th October, 2011, whereas, the copy of the F.I.R. in Bhuban P.S. Case No. 101(10) is related to an incident dated 13th October, 2011. However, the said F.I.R. was lodged by one Jayguru Patra, whose name finds a mention in Annexure-1 and regarding his presence at the PS on 14th October, 2011 by the time the alleged excess was committed by the petitioner. On a bare reading of the F.I.R. dated 15th October, 2011 and Annexure-1, it would appear that in connection with the affairs of the alleged Math, both sides had a dispute which resulted in the incidents taking place on 12th October, 2011 and 13th October, 2011, whereafter, the F.I.R. and the complaint seems to have been lodged and filed by the respective parties. The lodging of F.I.R. in Bhuban P.S. Case No.101 (10) dated 15th October, 2011 in relation to the dispute between the parties and the matter finally reaching to the PS is not factually disputed.

8. In **Basant Kishore Swain** (supra), this Court had the occasion to examine the necessity of sanction under Section 197 Cr.P.C. before taking cognizance of offences against a public servant. In the said case, some decisions for and against the requirement of sanction under Section 197 Cr.P.C. was discussed and ultimately, it was concluded that considering the allegations in the complaint and the fact that the informant's son was taken to the Outpost for the purpose of interrogation in connection with a theft case and was abused and assaulted while being in custody, such abuse and assault, if proved may be in the performance of

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official duty or dereliction thereof but since it cannot be totally extricated from the official act, the police officer was entitled to protection under Section 197 Cr.P.C.

9. There is no denial to the fact that the petitioner is a public servant, who is not removable from office except by order of the Government and therefore, it would be necessary to obtain sanction before taking cognizance of offences against him but the other condition which is to be satisfied is that while discharging his official duty, the mischief was committed. The other decisions which have been referred to in the case cited above are, namely, **Abani Ch. Biswal Vrs. State of Orissa and another: 64 (1987) CLT 659; Premjit Mohananda Vrs. Mohapani Karus and another: (1995) 8 OCR 594; Sri Biswaranjan Das and another Vrs. Sarat Kumar Nath : (1996) 16 OCR 586.** In **Abani Ch. Biswal** case, this Court observed that whether an offence was committed in course of official duty or not would depend on the facts of each case and the test may well be as to whether the public servant can reasonably claim or challenge that what he did was by virtue of his official duty but all the same he cannot ask for a blanket privilege for all the acts and uncalled for overdoing while discharging public duty. In **Kailash Chandra Mohanta Vrs. Ganeswar Amanta 1990 (I) OLR 432**, the Court held that since there was no material to show that the alleged act was in purported exercise of the official duty and as, that stage had not arrived, it was open for the accused to place such material on record later in the proceeding. The above decision is also considered by this Court in **Basant Kishore Swain** (supra). Similarly, one more decision was referred to in the case of **Trilochan Barik Vrs. Raghunath Bal 72 (1991) CLT 215**, where the order of cognizance was upheld without sanction since the alleged act was such that the OIC of the PS could not have had the protection under Section 197 Cr.P.C. In **Premjit Mohananda** case,

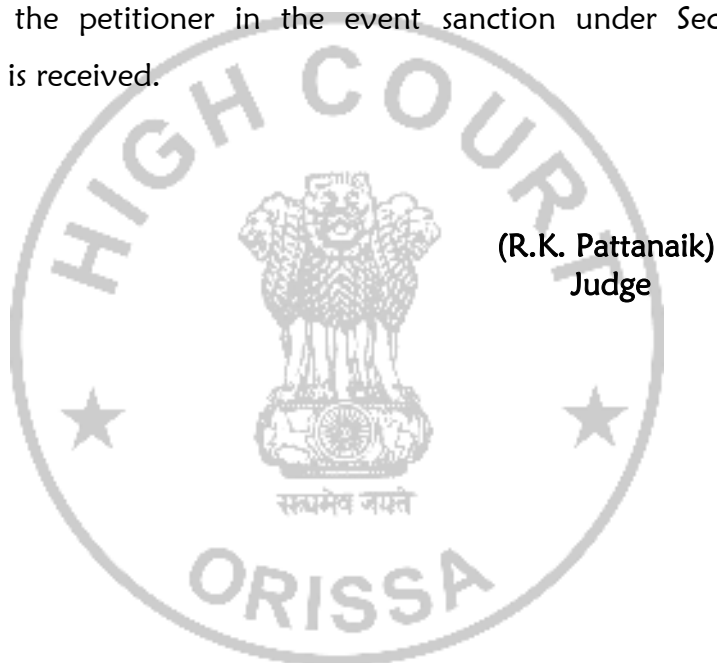
necessity of sanction was examined and after having gone through several decisions, it was held that protection can be claimed only when it is either within the scope of the official duty or in excess of it. In that case, the complainant was assaulted and abused inside police Hazat but the court held that it might be in excess of performance of the official duty but the acts cannot be said to be totally unconnected with the official duty or not to be in course of performance of official duty and therefore, the police officer was entitled to protection under Section 197 Cr.P.C. Without further elaborating on the above point, the sum and substance of the above analysis referring to the decisions (supra) is that even any excess is committed by a Government servant notwithstanding the fact that the alleged act amounts to an offence punishable under law, since it was committed while performing official duty, immunity is enjoyed in view of Section 197 Cr.P.C.

10. In the present case, the petitioner was at the PS and can fairly be said that he was on duty when the incident happened. The victim who is alleged to have been misbehaved and manhandled by the petitioner had been called to the PS in connection with the dispute of the Math. It appears that for the purpose of enquiry or confrontation, the petitioner had summoned the victim to the PS and there, in the presence of said Jayguru Patra and others, the latter alleged to have been abused and assaulted. Such conduct of the petitioner is definitely outrageous and unbecoming on the part of a police officer but at the same time, he was on duty and was enquiring about a matter related to the dispute of the local Math and even though, the overt acts are offensive, excess and punishable in law, he being at the PS and discharging official function, sanction under Section 197 Cr.P.C. was necessary, which the learned court below should have insisted upon before proceeding against him. Having said that, the Court arrives at a

logical conclusion that the order of cognizance under Annexure-2 cannot be sustained and therefore, would have to be set aside due to want of sanction.

11. Accordingly, it is ordered.

12. In the result, petition under Section 482 Cr.P.C. filed by the petitioner stands allowed. Consequently, the impugned order of cognizance dated 8th October, 2005 under Annexure-2 passed in I.C.C. Case No.39 of 2011 by the learned J.M.F.C., Bhuban is hereby set aside. However, the court below is at liberty to proceed against the petitioner in the event sanction under Section 197 Cr.P.C. is received.



KC Bisoi/Secretary