

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2350 of 2011

Amiya Kumar Behera

....
Mr. K. Mohanty, Advocate

Petitioner

-Versus-

State of Orissa and others

.... Opposite Parties

Mr. S.S. Mohapatra, ASC
Mr. Patitapaban Panda, Advocate for OP Nos.2 and 3

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:04.07.2022

1. Present petition is filed under Section 482 Cr.P.C. at the instance of the petitioner assailing the impugned order of cognizance dated 26th April, 2011 (Annexure-3) passed in I.C.C. Case No.53 of 2011 by the learned J.M.F.C., Jajpur Town for taking cognizance of offences under Sections 323/324/294/506 and 379 read with Section 34 IPC against him on the grounds *inter alia* that it is not maintainable in the facts and circumstances of the case and also for the reason that no sanction under Section 197 Cr.P.C. was obtained and thus, has to be set aside.

2. The petitioner contends that the complaint was filed by OP Nos.2&3 and there was no statutory sanction obtained in terms of Section 197 Cr.P.C. and therefore, the learned court below erred in law in passing the order of cognizance under Annexure-3. As per the petitioner, he was posted as the ASI of Police, Kaliapani PS at the relevant point of time and was entrusted with the duty of maintaining traffic control in several places within the jurisdiction of the PS and in that respect, a command certificate had been issued to him for the day i.e. 24th March, 2011 and during that

time, the alleged mischief has been complained of by OP Nos.2&3 who are involved in various anti-social activities, as for instance, a complaint was filed by one Sisir Kumar Barik against OP No.2, namely, the complainant and as a result, a case was registered under Sections 379 read with 34 IPC and in such background facts, the complaint has come into being intentionally to harass him by making frivolous allegations to the effect that he abused OP Nos.2 &3 in slang language and threatened and assaulted him while with the APR force and snatched away cash of Rs.970/- from his pocket which is totally false but then, the learned court below without appreciating the fact that he was on duty took cognizance of offences against him without a sanction which is mandatorily required in view of Section 197 Cr.P.C.

3. Heard. Mr. K. Mohanty, learned counsel for the petitioner, Mr. S.S. Mohapatra, learned ASC for OP No.1 and Mr. Patitapaban Panda, learned counsel appearing for OP Nos.2&3.

4. Mr. Mohanty, learned counsel for the petitioner submits that without sanction under Section 197 Cr.P.C. obtained by OP Nos.2&3, the learned court below ought not to have passed the impugned order under Annexure-3 considering the fact that the accused to be a public servant and was on duty assigned to him. While contending so, Mr. Mohanty produced a copy of the command certificate issued in favour of the petitioner and other documents, such as, copy of the F.I.R. in Kaliapani P.S. Case No.47 dated 5th October, 2010, which was charge sheeted thereafter, etc. in order to show that OP Nos.2 having criminal antecedent. In support of the requirement of sanction under Section 197 Cr.P.C., Mr. Mohanty cited a decision of this Court in **Satyabadi Padhi Vrs. Nepal Chandra Kar: (2001) (1) OLR 238** besides the judgment of the Supreme Court in the case of **State of Orissa through Kumar Raghvendra Singh and others Vrs. Ganesh Chandra Jew AIR 2004 CRLMC No.2350 of 2011**

SC 2179. In the case of **Satyabadi Padhi** (supra), this Court held that sanction to be necessary and cognizance cannot be taken without it, when twin conditions are fulfilled, such as, (a) the public servant is not removable from office except by or with the sanction of the Government; and (b) he is accused of any offence alleged to have been committed, while acting or purporting to act in discharge of his official duty. The Apex Court in **Ganesh Chandra Jew** case (supra) elaborately dealt with the need of sanction before proceeding against a public servant and exercise of the inherent jurisdiction of the High Court under Section 482 Cr.P.C. in the light of the principles laid down in **State of Haryana Vrs. Bhajanlal 1992 Supp. (1) SCC 335**. In the aforesaid case, the Apex Court did have the occasion to consider number of judgments on the applicability of Section 197 Cr.P.C. in the given set up facts and circumstances which decides whether sanction to be necessary or not and ultimately held that prosecution in that case would amount to abuse of process of law.

5. Mr. Panda, learned counsel for OP Nos.2&3, while supporting the contention of Mr. Mohapatra, learned ASC for OP No.1 submitted that the conduct of the petitioner was such during the alleged occurrence that there was no need of any sanction under Section 197 Cr.P.C. and rightly the court below, in the facts and circumstances of the case, did not feel it so to direct the complainants and correctly proceeded by taking cognizance of the offences under Annexure-3 and therefore, it calls for no interference by this Court exercising inherent jurisdiction under Section 482 Cr.P.C.

6. The petitioner produced a command certificate dated 24th March, 2011 (Annexure-1) in order to convince that he was on law and order duty on the aforesaid date and at that point of time, the incident alleged to have happened at about 8 am in the morning

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hours and therefore, being in duty since the mischief is complained of, sanction under Section 197 Cr.P.C. was required. To satisfy that the complainants being involved in couple of criminal cases, evidence has also been submitted by the petitioner. The question is, whether the petitioner was performing duty at the relevant point of time on 24th March, 2011? According to the petitioner, he was on duty, whereas, the complainants, namely, OP Nos.2&3 have described the incident for being abused and assaulted at a place inside a road side hotel by the petitioner while he was with the APR force. No doubt the settled position of law is that anyone acting or while purporting to act and discharge official functions shall have the protection from or against criminal prosecution in view of Section 197 Cr.P.C. the objective being to protect and prevent responsible public servants against institution of vexatious criminal proceedings. At times, it is difficult to find out whether a public servant was really on duty or not because normally the complaint filed does not disclose any such fact. In the instant case, the petitioner submitted a command certificate i.e. Annexure-1 to show that he was on duty. From a bare perusal of the complaint (Annexure-3), it is made to appear that the petitioner with four other members of APR force did commit the alleged mischief assaulting the complainants. It is not that the petitioner was alone rather arrived at the spot along with APR force which suggests that he was performing duty during that time. No doubt the allegations show that the complainants were abused and assaulted, as a result of which, they sustained injuries. Since the incident was with the involvement of the police officials, it seems that no F.I.R. was lodged and instead the complaint was filed on the next day of the alleged occurrence. Applying the principles laid down by the Supreme Court time and again and also in the decision of **Ganesh Chandra Jew** (supra), the Court reaches at a conclusion which is quite probable considering the materials submitted to the effect

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that the petitioner was on duty on 24th March, 2011 and on the said date, the alleged incident took place. The presence of the petitioner with the APR force is prima facie suggestive of the fact that he was on duty and the fact of issuance of command certificate has been pleaded by the petitioner and proved by production of a copy of it.

7. There is no denial to the fact that the petitioner is a Government servant duly notified vide notification No.6016 dated 24th December, 1981 issued by the Home Department, Government of Orissa which is in terms of Section 197 (3) Cr.P.C. and with that pleading, it is contended that sanction under Section 197 Cr.P.C. was required to be obtained by OP Nos.2&3. The settled law is that even if any excess is committed, while acting or purporting to act in the discharge of official duty, Section 197 Cr.P.C. applies. Such mischief may be leading to commission of certain offences and that may not be a part of the official duty but having been committed by a public servant, while on duty, the law enjoins that sanction would be required under Section 197 Cr.P.C. The facts on record particularly derived from Annexure-2 with the mischief allegedly committed by the petitioner and other members of the APR force indicates that it was committed, while on duty and therefore, sanction under Section 197 should have been obtained before taking cognizance of offences by the learned court below. It is not that the petitioner committed the alleged overt act in his individual capacity, rather, the complaint reveals that he arrived along with APR force which persuades the Court to hold that it is a case where sanction was necessary which is in the lines of the settled position of law as enunciated in plethora of decisions including **Gopal Chandra Jew** case (supra).

8. Accordingly, it is ordered.

9. In the result, petition filed under Section 482 Cr.P.C. stands allowed and consequently, the impugned order under Annexure-3 passed in I.C.C. Case No.53 of 2011 by the learned J.M.F.C., Jajpur Town is hereby set aside. However, the learned court below shall be at liberty to proceed against the petitioner after having received sanction in terms of Section 197 Cr.P.C.

(R.K. Pattanaik)
Judge

KC Bisoi/Secretary

