

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1182 OF 2021

HARJIT SINGH S/O. TIRATH SINGH SAWHNEY
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Party In Person
APP for Respondent 1 : Mr. P G Borade
Advocate for Respondent 5 : Mr. Patil Swapnil S.
Respondent nos. 2 to 4 are formal parties.

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CORAM : SHRIKANT D. KULKARNI, J.

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Reserved on : September 05, 2022
Pronounced on : October 04, 2022

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ORDER :-

1. Heard finally with consent of both sides at admission stage.
2. The petitioner by invoking writ jurisdiction under Article 227 of the Constitution of India has sought following reliefs :-

Prayer clauses 'C' and 'D' reads thus :-

- "C. By issuing writ of certiorari or any other appropriate writ, order or directions in the like nature, kindly modify the impugned proceedings in the nature of RCC No.2039 of 2015 by further order of issue process against respondent no.5 by modifying the issue process dated 9.2.2016 passed by the learned Judicial Magistrate First Class, Aurangabad under Section 379 read with section 34 of the Indian Penal Code in the said

proceeding for that purpose issue necessary orders.

- D. By issuing writ of certiorari or any other appropriate writ, order or directions in the like nature, the judgment and order dated 5.8.2021 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision No.111 of 2020, may kindly be quashed and set aside, and modify the issue process order against respondent no.5 in RCC No.2039 of 2015 dated 9.2.2016 under section 379 read with section 34 of the Indian Penal Code and for that purpose, issue necessary orders.”

3. It is necessary to have a brief survey on the facts of the case :-

The petitioner has filed FIR with Jinsi Police Station vide crime no.3 of 2011 against unknown persons for theft of his Activa Scooter alongwith important documents when it was parked at Sant Javaladas Math, Kailashnagar, Aurangabad. The investigation of that crime was entrusted to respondent no.5 Head Constable Mr. Ware. The stolen Activa Scooter was traced out and, subsequently, handed over to the present petitioner as per the order passed by the learned Magistrate, but the original documents were not found. In the said crime, respondent no.5/Head Constable filed 'B' summary report with the trial court and on the day of submission of said 'B' summary

report, the learned Magistrate had accepted the same. That order was challenged by the present petitioner before the learned Sessions, Aurangabad. The learned Sessions Judge, Aurangabad was pleased to set aside that order and remanded the matter to the trial court for fresh decision. The learned Magistrate was pleased to reject 'B' summary report and further issued process against in all three accused persons. No cognizance was taken against present respondent no.5.

4. Feeling aggrieved by the said order, the petitioner had preferred criminal revision application no.111 of 2020 before the Sessions Judge, at Aurangabad. The learned Additional Sessions Judge-4, Aurangabad was pleased to dismiss the criminal revision application by recording finding that the order of issue process cannot be passed against respondent no.5/Head Constable Mr. Ware without having requisite sanction from the competent authority as provided under section 197 of the Criminal Procedure Code.

5. Feeling dis-satisfied by the judgment and order rendered by the Additional Sessions Judge-4, Aurangabad, the petitioner has challenged the order passed by both the courts below.

6. At the outset, it is necessary to place on record that respondent nos.2 to 4 are made formal parties and no relief is sought against them. Respondent no.1/State of Maharashtra and respondent no.5 A.K. Ware Head Constable (since retired) are the main contesting parties to this petition.

7. Heard the petitioner/Party-in-person, learned APP Mr. Borade for the State/respondent no.1 and Mr. Swapnil Patil, learned counsel for respondent no.5.

8. Party-in-person vehemently submitted that the orders passed by both the courts below are erroneous in the eye of law. He submitted that, respondent no.5 was working as Head Constable at the relevant point of time and entrusted with the investigation of crime no.3 of 2011 registered at Jinsi police station. He has joined the hands with respondent nos.2 to 4 and filed 'B' summary

report to help remaining accused persons. The said act of respondent no.5 being an investigating officer was not covered by section 197 of the Criminal Procedure Code. He has acted illegally and as such illegal acts cannot be protected by section 197 of Cr.P.C. He submitted that the learned Additional Sessions Judge-4, Aurangabad has given unnecessary importance regarding sanction for prosecution in this case. The order passed by the Additional Sessions Judge, Aurangabad is bad in law and liable to be quashed and set aside.

9. The petitioner-Party-in-person has relied on the following stock of citations.

- i. State of J & K Vs. Charan Dass Puri reported in 1999 (5) SCC 738.
- ii. Ram Charan Gupta Vs. The State through C.B.I. reported in 2012 (2) RLW 1086.
- iii. Fakhruzamma Vs. State of Jharkhand and anr in Criminal appeal no.2086 of 2013 (@ Special Leave Petition (CRL.) no.4069 of 2012).
- iv. Bhanuprasad Hariprasad Dave and another Vs. The State of Gujarat reported in AIR 1968 Supreme Court 1323.
- v. Rajib Ranjan and others Vs. R. Vijaykumar reported in (2015) 1 Supreme Court Cases 513.

- vi. P Govinda Bhat Vs. State of Karnataka in Cri
Petition No.469 of 1999 (Karnataka High
Court.)

10. Mr. Borade, learned APP for the State supported the impugned judgment and order passed by the Additional Sessions Judge, Aurangabad. He submitted that, in view of mandatory provisions of section 197 of Cr.P.C. sanction for prosecution from the competent authority is necessary. In absence of sanction, no cognizance can be taken against a public servant. He submitted that there is no error on the part of the learned Additional Sessions Judge, Aurangabad while dismissing the revision.

11. Mr. Swapnil Patil, learned counsel for respondent no.5 also supported the orders passed by both the courts below. He submitted that when the law gives protection to the public servant, it is mandatory to comply with that legal requirement. He submitted that according to the allegations levelled by the present petitioner, respondent no.5 was entrusted with the investigation of the crime pertaining to theft of the scooter of the present petitioner. He has traced out the

scooter and handed over the same to the petitioner according to the procedure and as per the order of the Magistrate. So far as the question of documents allegedly kept in the scooter at the time of the incident are concerned, no substance was found and accordingly 'B' summary report came to be filed. It was by way of discharge of duty by respondent no.5. He has submitted the report according to provisions of law. Even apart that report of 'B' summary came to be rejected and the Court has taken cognizance against concerned accused persons. How action can be initiated against respondent no.5 being an investigating officer of the said crime without having prior sanction from the competent authority u/s 197 of the Cr.P.C. He submitted that in the present facts and circumstances of the case, sanction is necessary.

12. Mr. Swapnil Patil has placed his reliance on the following citation.

D. Devraja Vs. Owais Sabeer Husain reported in 2020 Supreme Court 3292.

13. I have considered the submissions of both sides. Perused the judgment and order rendered by the Additional Sessions Judge-4, Aurangabad in criminal revision application no.111 of 2020 as well as the order of issue process passed by the learned JMFC in RCC No.2039 of 2015.

14. It is an undisputed position that investigation of crime no.3 of 2011 registered at Jinsi police station u/s 379 of IPC was entrusted to PW 5 Mr. A K Ware, HC (now retired). The center of controversy is filing of 'B' summary with the learned J.M.F.C. and improper investigation in the said crime.

15. In view of the contentions raised by the petitioner, the only legal points involved in the petition are :

- i] Whether sanction for prosecution is necessary;
- ii] Aspect of work of respondent no.5 as an investigating officer/a public servant discharging official duties gets protection u/s 197 of the Cr.P.C.

16. The provision of section 197 of Cr.P.C. is reproduced herein below :-

“197. Prosecution of Judges and Public Servant :-

(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.”

This provision makes it clear that if any offence is alleged to have been committed by a public servant who cannot be removed from the office except by or with the sanction of the Government, the Court is precluded from taking cognizance of such offence except with the previous sanction of the competent authority specified in this provision.

As such, the question is of applicability of section 197 of Cr.P.C.

17. The investigation of Cr.No.3 of 2011 regarding theft of Aactiva Scooter of the petitioner was entrusted to PW-5 Police Head Constable Ware when attached to Jinsi Police Station on 21.1.2011. Respondent no.5 PHC Ware alleged to have joined hands with co-accused and submitted ‘B’ summary report. Be that as it may, he was discharging official duty as a public servant in the capacity as an investigation officer of the said crime. In case of **Rajib Ranjan and others Vs. R. Vijaykumar**

(supra) the Hon'ble Supreme Court has dealt with this issue in detail and observed in paragraph nos.14,15 and 16 as under :-

- “9. The question is of the applicability of [Section 197](#) of the Code. Said provision with which we are concerned is reproduced below :-

“197. Prosecution of Judges and public servant -

(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.”

This provision makes it clear that if any offence is alleged to have been committed by a public servant who cannot be removed from the office except by or with the sanction of the Government, the Court is precluded from taking cognizance of such offence except with the previous sanction of the competent authority specified in this provision.

15. The sanction, however, is necessary if the offence alleged against public servant is committed by him “while acting or purporting to act in the discharge of his official duties”. In order to find out as to whether the alleged offence is committed while acting or purporting to act in the discharge of his official duty, following yardstick is provided by this Court in Dr. Budhikota Subbarao (supra) in the following words:

“If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of [Section 197](#) of the Code cannot be disputed.”

16. This principle was explained in some more detail in the case of [Raghunath Anant Govilkar v. State of](#)

Maharashtra, which was decided by this Court on 08.02.2008 in SLP (Crl.) No.5453 of 2007, in the following manner :-

“On the question of the applicability of Section 197 of the Code of Criminal Procedure, the principle laid down in two cases, namely, Shreekantiah Ramayya Munipalli v. State of Bombay and Amrik Singh v. State of Pepsu was as follows :-

It is not every offence committed, by a public servant that requires sanction for prosecution under Section 197 (1) of Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary.

The real question therefore, is whether the acts complained of in the present case were directly concerned with the official duties of the three public servants. As far as the offence of criminal conspiracy punishable under Sections 120-B read with Section 409 of the Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar.”

18. It is not every offence committed, by a public servant that requires sanction for prosecution under Section 197 (1) of Criminal Procedure Code. Even every act done by the public servant while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed

to have been done by virtue of the office, then sanction would be necessary.

19. In a very recent decision in **D. Devraja Vs. Owais Sabeer Hussain** (supra), the Hon'ble Supreme Court has again reiterated the same view. Paragraph no.67 to 74 are important which covers the controversy in hand. Paragraph nos. 67 to 74 are reproduced as under :-

- “67. The law relating to the requirement of sanction to entertain and/or take cognizance of an offence, allegedly committed by a police officer under [Section 197](#) of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, is well settled by this Court, inter alia by its decisions referred to above.
68. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under [Section 197](#) of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate government.
69. Every offence committed by a police officer does not attract [Section 197](#) of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under [Section 197](#) of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act.
70. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require

sanction. To cite an example, a police man assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

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.
72. The language and tenor of [Section 197](#) of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.
73. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.
74. If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate government is obtained under [Section 197](#) of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act.

20. Having regard to the legal position made clear by the Hon'ble Supreme Court once again by way of recent decision in **D. Devraja** (supra), if the facts of the case in hand and allegations levelled against respondent no.5, then the I.O. of the Cr.No.I-3 of 2011 are considered, sanction is necessary. His act as a police

officer/investigating officer is relating to discharge of his official duty and it is imperative to get protection under section 197 of the Cr.P.C. If respondent no.5/Police Head Constable has committed a wrong which constitutes a criminal offence and renders him liable for criminal prosecution, he can be sentenced with sanction from the appropriate government/competent authority. Protection is available to respondent no.5 PHC Ware when the alleged act done by him in the capacity as a public servant is reasonably connected with discharge of his official duty and official duty is merely a cloak for the objectionable act. It is not the case that alleged act is committed by respondent no.5 Mr. Ware PHC entirely outside the scope of the duty of a police officer.

21. The party in person has attempted to put up a case that respondent no.5 is now retired and as such, no previous sanction would be required by placing reliance on the decision of the Hon'ble Supreme Court in case of **State of J & K Vs. Charan Das Puri**. It was a case under Jammu and Kashmir Public Servants Prevention of Corruption Act, 1975 and under various

provisions of Ranbir Penal Code. Apart from that, in the said decision, the Hon'ble Supreme Court by referring to its earlier decision in **Kalicharan Mahapatra Vs. State of Orissa** reported in (1998) (6) SCC 411 held that if a public servant has ceased to be a public servant at the time the Court is called upon to take cognizance of offence, no previous sanction is necessary.

22. Having regard to the above legal position made clear by the Hon'ble Supreme Court, let me examine the facts of this case. The petitioner has filed proceeding vide RCC No.2039 of 2015 against respondent nos.5 and 3 others under section 379 of IPC on 17.10.2015. After earlier round of litigation, the complaint was placed before the Magistrate for taking cognizance on 9.2.2016 (page 26). On 9.2.2016 respondent No.5/PHC Ware was in service. As per the documents made available by the petitioner/party-in-person marked collectively as "Y" respondent no.5 has taken V.R.S. w.e.f. 28.2.2017. As such, on the date of taking cognizance i.e. on 9.2.2016, he was in service as a Police Head Constable/a public servant. Certainly, protection was available to him as

provided under section 197 of the Criminal Procedure Code. The above citation relied upon by the party-in-person is not helpful to this case.

23. Having regard to the above reasons and discussion, there is no merit in the petition.

ORDER

- i. Criminal writ petition stands dismissed.
- ii. No order as to costs.
- iii. Petition is accordingly disposed off.

(SHRIKANT D. KULKARNI, J.)

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