

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32026 of 2023

Arising Out of PS. Case No.-855 Year-2021 Thana- PATNA COMPLAINT CASE District-
Patna

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1. RAM SHANKAR SINGH SON OF RAM SAGAR SINGH Road No.-6, Ward No.-23, Bishunath Nagar, P.S. Nagar, District-Begusarai at present posted as Station House Officer, Shastri Nagar, Patna
 2. Arun Kumar son of Anil Kumar Roy, R/O- Ward no.-8, Panapur, P.S.- Panapur, District-Muzaffarpur at present posted as Station House Officer, Gandhi Maidan, Patna
 3. Rajeshwar Prasad Son Of Late Radhe Mahto r/o- Reeta Kunj Colony, Bahadurpur Bagicha Bazar, P.S.- Bahadurpur, District-Patna at present posted in the office of Senior Superintendent of Police, Bhagalpur

... .. Petitioner/s

Versus

1. The State Of Bihar Through Its Home Secretary, Govt. Of Bihar , Patna Bihar
2. SAKSHI SINHA W/O-RITU RAJ, D/O- SHAILENDRA PRAKASH R/O- Road No.2, Adarsh Colony, Khemnichak, PS-Ram Krishna Nagar, District- Patna

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 14227 of 2023

Arising Out of PS. Case No.-855 Year-2021 Thana- PATNA COMPLAINT CASE District-
Patna

SAKSHI SINHA WIFE OF RITU RAJ, D/O SHAILENDRA PRAKASH R/O AIRCEL TOWER, NEW AREA NATH CHAK BIRHANA, PATNA-803213, PRESENTLY RESIDING AT ROAD NO.2 ADARSH COLONY, KHEMNICHAK, P.S.- RAM KRISHNA NAGAR, TOWN AND DISTRICT- PATNA

... .. Petitioner/s

Versus

1. The State of Bihar
2. UPENDRA SHARMA SON OF NOT GIVEN THE THEN SENIOR SUPERINTENDENT OF POLICE, PATNA C/O DIRECTOR GENERAL OF POLICE, BIHAR, PATNA

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 32026 of 2023)

For the Petitioner/s : Mr.Om Prakash Kumar



For the Opposite Party/s : Mr.Abhay Kumar Roy
(In CRIMINAL MISCELLANEOUS No. 14227 of 2023)
For the Petitioner/s : Mr.Shivam
For the Opposite Party/s : Mr.Narendra Kumar Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V. JUDGMENT
Date : 12-12-2023

Heard learned counsel for the petitioners and learned counsel appearing on behalf of the State.

2. Cr. Misc. No. 32026 of 2023 has been filed by the petitioners challenging the order taking cognizance dated 07.01.2023 passed by the Additional Chief Judicial Magistrate, 2nd , Patna in connection with Complaint Case No. 855(C)/2021 for the offences punishable under Sections 352/365/368/346/354/354A/354B/ &120B of the Indian Penal Code whereby and whereunder Sections 323 and 504 of the Indian Penal Code against the petitioners and the petitioners have been summoned to face trial. The petitioners have challenged the entire proceeding arising out of Complaint Case No. 855 (C) of 2021 pending in the Court of Additional Chief Judicial Magistrate, 2nd , Patna.

3. Cr. Misc. No. 14227 of 2023 has been filed by the Complainant in connection with Complaint Case No. 855 (C) of 2021 and her prayer is for quashing the part of the order dated 07.01.2023 passed by the Additional Chief Judicial Magistrate, Patna in Complaint Case No. 855 (C) of 2021 whereby and



whereunder despite there being sufficient materials available against the Accused No. 1 i.e., Upendra Sharma, O.P. No. 2, cognizance has been taken only against accused Rama Shankar Singh, Rajeshwar Prasad and Arun Kumar Singh and no offence was made out against Upendra Sharma.

4. The first petition is by the petitioners against whom cognizance has been taken and the second petition is by the Complainant for taking cognizance against Upendra Sharma the then Senior Superintendent of Police, Patna

5. The history of the case in short is that the opposite party no.2, namely, Sakshi Sinha, filed a complaint petition before the Chief Judicial Magistrate, Patna on 16.02.2021 against the following officials:-

(1) Senior Superintendent of Police, Patna namely
Upendra Sharma

(2) S.H.O. cum Inspector, Shastri Nagar Police Station,
Patna, namely, Ram Shankar Singh

(3) S.H.O. cum Inspector of Ram Krishna Nagar Police
Station namely Rajeshwar Prasad

(4) S.H.O. cum Inspector of Hawaii Adda Police Station
namely Arun Kumar and others police personnel and
also other police officials



6. Learned counsel appearing on behalf of the petitioners submits that the main motive behind filing of the aforementioned present complaint case by the complainant before the learned Chief Judicial Magistrate, Patna is just to pressurize the police personnel investigating Shastri Nagar P.S. Case No. 23 of 2021 dated 12.01.2021 under sections 302, 120B of the Indian Penal Code and Section 27 of Arms Act for murder case of one Rupesh Singh (Indigo Airlines Manager) because after 21 days of intensive investigation through electronic mode/technical research, the police collected conclusive evidence and found direct involvement of husband of the complainant in the murder after which the husband of the complainant was arrested on 02.02.2021. Therefore, the complainant after 13 days of arrest of her husband has filed the present false and concocted complaint case on 16.02.2021.

7. Learned counsel for the petitioners further submits that serious doubt is created on the story of the complainant because she has annexed a prescription of Patna Medical College and Hospital, Patna to show that she was beaten by the accused persons on 30.01.2021 but the said prescription is of 06.02.2021 i.e. after one week of alleged occurrence. Therefore, the complaint has been registered belatedly after passage of more



than 15 days of the alleged occurrence on the basis of a belated medical prescription.

8. It is submitted that Rituraj (husband of O.P. No.2) has been found involved in many cases which are as follows:-

- a) Raxaul PS Case No. 88/2016 dated 12.05.2016 under section 147, 148, 149, 323, 324, 354, 363, 448, 307 of the IPC and 27 of Arms Act.
- b) Raxaul PS Case No. 89/2016 dated 12.05.2016 under section 25(1-b)a, 26, 27 & 35 of Arms Act.
- c) Ram Krishna Nagar PS Case No. 44 of 2021 dated 02.02.2021 under section 25(1-b)a/26 of Arms Act.

9. He next submits that one complaint has been filed before Bihar Human Right Commission, Patna on 09.03.2021 by a politician namely Sri Rajesh Ranjan @ Pappu Yadav, Ex-member of Parliament cum President of Jan Adhikar Party for proper investigation regarding the aforesaid occurrence. Further, Dy. S.P., Sachiwalaya enquired the allegations made before BHRC and submitted a report vide memo no. 2765 dated 27.03.2021 before the City Superintendent of Police, Central, Patna. After enquiry, the City Superintendent of Police, Central, Patna sent a enquiry report to the Senior Superintendent of Police, Patna on 30.03.2021. Further, the Senior Superintendent



of Police, Patna filed an enquiry report before the Registrar, Bihar Human Right Commission, Patna vide letter no. 3505 dated 02.04.2021.

10. It is further submitted that after submission the enquiry report by the S.S.P., Patna and after consideration of the aforesaid report, the Hon'ble Chairman of Bihar Human Right Commission, Patna dropped the complaint case of the complainant.

11. It is also submitted that after investigation, the police submitted a Charge Sheet under section 302, 120(B) IPC and 27 of Arms Act vide Charge Sheet No. 170 of 2021 dt.08.05.2021 against the accused persons namely (1) Rituraj (2) Saurav Kumar @ Pawan @ Kharha (3) Jai Shankar @ Pushkar @ Chootu @ Baua.

12. He submits that a supplementary Charge Sheet has been submitted under section 302, 120(B) IPC and 27 of Arms Act vide supplementary Charge Sheet No. 361 of 2021 dt. 06.10.2021 against the accused persons namely Abhayanand @ Aryan Jaishwal @ Munchun @ Sunny.

13. He next submits that the abovesaid facts clearly prove that the husband of the complainant has committed the murder and it is not a case of false implication.



14. Learned counsel for the petitioners further submits that the learned Magistrate vide impugned order dated 07.01.2023 has been pleased to take cognizance against the petitioners under Sections 323 and 504 of Indian Penal Code after deposition of the complainant and five more enquiry witnesses. The learned magistrate has exceeded its jurisdiction in taking cognizance and issuing summons against the petitioners as there was no proper prosecution sanction by the competent authority as envisaged under section 197 of Code of Criminal Procedure, 1973. Section 197 Cr.P.C. is extracted herein below for convenience:-

"S. 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".

15. Learned counsel appearing for the petitioners further



submitted that the object of sanction for prosecution under Section 197 Cr.PC is to protect the public servants discharging official/public functions from harassment by initiation of mala-fide/frivolous/retaliatory criminal proceedings. A Constitution Bench of the Supreme Court in the case of ***Matajog Dobey Vs. H.C. Bhari*** reported in ***AIR 1956 SC 44***, delineating importance of sanction for prosecution of public servants held as under:-

"15. The minor contentions may be disposed of at the outset. Even if there was anything sound and substantial in the constitutional point about the vires of Section 5(1) of the Act, we declined to go into it as it was not raised before the High Court or in the grounds of the petition for special leave to appeal. Article 14 does not render Section 197 of the Criminal Procedure Code ultra vires as the discrimination is based upon a rational classification. 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. It was argued that Section 197 of the Criminal Procedure Code vested an absolutely arbitrary power in the Government to grant or withhold sanction at their sweet-will and pleasure, and the legislature did not lay down or even indicate any guiding principles to control the exercise of the discretion. 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. If the Government gives sanction against one public servant but declines to do so against another, then the government servant against whom sanction is given may possibly



complain of discrimination. But the petitioners who are complainants cannot be heard to say so, for there is no discrimination as against any complainant. It has to be borne in mind that a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the government and not in a minor official. Further, we are not now concerned with any such question. We have merely to see whether the court could take cognizance of the case without previous sanction and for this purpose the court has to find out if the act complained against was committed by the accused while acting or purporting to act in the discharge of official duty. Once this is settled, the case proceeds or is thrown out. Whether sanction is to be accorded or not is a matter for the government to consider. The absolute power to accord or withhold sanction conferred on the government is irrelevant and foreign to the duty cast on the court, which is the ascertainment of the true nature of the act.

16. Learned counsel for the petitioner further submitted that the intention behind protection under Section 197 Cr.PC is to protect the public servant from being unnecessarily harassed by launching a criminal proceeding against him for an offence allegedly committed while performing official/public duty. If the offence is in respect of an act done or purported to be done in discharge of official/ public duty, the public servant has protection under Section 197 CrPC. This protection under Section 197 CrPC has salutary object to prevent harassment of public servants and protect them for *mala fide* and motivated



criminal prosecution. However, if the competent authority finds that the act of commission/omission done by public servant was not in performance of his public duty, he would sanction prosecution of the public servant.

17. He submitted that in **(1973) 2 SCC 701 (Pukhraj Vs. State of Rajasthan and another)** the Supreme Court has held that the requirement of sanction cannot be confined to only such an act done or purporting to be done directly in discharge of his public office. This protection would be available in cases where the act complained of is in excess of the duty or under a mistaken belief as to the existence of such duty. Paragraph- 2 of **Pukhraj Vs. State of Rajasthan** and another case (*supra*) is extracted hereinunder:-

"2. The law regarding the circumstances under which sanction under Section 197 of the Code of Criminal Procedure is necessary is by now well settled as a result of the decisions from Hori Ram Singh's case [AIR 1939 FC 43: 1939 FCR 159 : 40 Cri LJ 468] to the latest decision of this Court in Bhagwan Prasad Srivastava v. N.P. Misra [(1970) 2 SCC 56: (1971) 1 SCR 317]. 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 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. In Hori Ram Singh case Sulaiman, J. observed:

"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 is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction."



In the same case Varadachariar, J. observed: "there must be something in the nature of the act complained of that attaches it to the official character of the person doing it". In affirming this view, the Judicial Committee of the Privy Council observed in Gill [AIR 1948 PC 128: 1948 LR 751A 41: 49 Cri LJ 503] case:

"A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty.... The test may well be whether the public servant, if challenged, can reasonably claim that, what he does in virtue of his office."

In Matajog Dobey v. H.C. Bhari (AIR 1955 SC 44: (1955) 2 SCR 925 : 1956 Cri LJ 140] the Court was of the view that the test laid down that it must be established that the act complained of was an official act unduly narrowed down the scope of the protection afforded by Section 197. After referring to the earlier cases the Court summed up the results as follows:

"There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

Applying this test it is difficult to say that the acts complained of i.e. of kicking the complainant and of abusing him, could be said to have been done in the course of performance of the 2nd respondent's duty. At this stage all that we are concerned with is whether on the facts alleged in the complaint it could be said that what the 2nd respondent is alleged to have done could be said to be in purported exercise of his duty. Very clearly it is not. We must make it clear, however, that we express no opinion as to the truth or falsity of the allegations."



18. It has also been submitted by the learned counsel for the petitioners that it is also well settled that an application under Section 482 Cr.PC is maintainable to quash the proceedings for want of sanction or if same are frivolous or in abuse of process of the Court. If there is no reasonable relationship with the official/public duty the protection under Section 197 Cr.PC will not be available to such a public servant. However, for the alleged offence committed by the police personnel, which may be in excess of his official/public duty, without sanction the Court is barred to take cognizance of the offence.

19. Learned counsel for the petitioners further submitted that in the present case no such occurrence as alleged in the complaint case took place. The petitioners were discharging their duty and were investigating a sensational murder case which took place in the heart of Patna town. It is during discharge of official duty by the petitioners that they came to know about the involvement of the husband of the complainant and on the basis of clinching evidence the husband of the complainant was arrested. The whole and sole intention of section 197 Cr.PC is to protect to government officials discharging their duty because while discharging their duties



there are chances that some person may feel offended and file false complaints.

20. The petitioners also rely upon a recent order dated 10.08.2022 passed in **A482- Case No. 5776 of 2017 (Ajeet Shukla & Ors Vs State of U.P. and Ors)** by the Hon'ble Allahabad High Court. In the said case cognizance was taken by the C.J.M without any prosecution sanction against the police officials. The allegation against the police officials was with regard to use of force against the agitating lawyers inside the court premises. After considering the facts and circumstances the Hon'ble Allahabad High Court was pleased to quash the proceeding under section 482 Cr. P.C. and it has been held that protection under section 197 Cr. P.C. has salutary object to prevent harassment of public servant and protect them from malafide and motivated criminal prosecution. Lastly it has been held in the abovesaid judgment *"Even if the Police Officer had exceeded to some extent their authority in discharge of their official/public duty, then also sanction would be required for their prosecution"*.

21. The learned counsel appearing on behalf of the petitioners rely on the celebrated judgment of **Bhajan Lal Vs State of Haryana** reported in **AIR 1992 SC 604** particularly



para 102 (7) which says *"Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge". This is also ground for quashing of the prosecution.*

22. It is submitted that the Chief Judicial Magistrate, Patna took cognizance against the petitioner nos. 1, 2 & 3, who were members of the team to investigate the case and were posted as S.H.O. Shastri Nagar Police Station, S.H.O. Hawaii Adda Police Station and S.H.O. Ram Krishna Nagar Police Station respectively, in a routine manner without any application of mind and hence cognizance order dated 07.01.2023 is bad in eye of law as well as on the facts of the case.

23. Learned counsel appearing on behalf the complainant in first case i.e. Cr. Misc. No. 30206 of 2023 and appearing on behalf of the petitioners in 14227 of 2023 has submitted that the offences which are made out against the accused persons and their acts are not protected under Section 197 of the Cr. P.C.

24. I have considered the submissions of the parties.

25. It is an admitted position that the husband of the complainant is an accused in the sensational murder of one



Rupesh Singh and he was arrested in connection with the said murder and is facing trial. The petitioners and Upendra Sharma were involved in the investigation of the murder of Rupesh Singh.

26. The Compliant case has been filed by the complainant and before taking cognizance no sanction has been obtained by the complainant.

27. The Supreme Court in the case of ***D.T. Virupakshappa Vs. C. Subhas reported in (2015) 12 SCC 231*** has considered the issue of sanction in paragraph No. 4, 5, 6, 7, 8, and 9 which is as follows:-

“4. The main contention of the appellant is that the learned Magistrate could not have taken cognizance of the alleged offence and issued process to the appellant without sanction from the State Government under Section 197 CrPC, and that on that sole ground, the High Court should have quashed the proceedings.

5. The question, whether sanction is necessary or not, may arise on any stage of the proceedings, and in a given case, it may arise at the stage of inception as held by this Court in Om Prakash v. State of Jharkhand [Om Prakash v. State of Jharkhand, (2012) 12 SCC 72 : (2013) 3 SCC (Cri) 472] . To quote: (SCC p. 94, para 41)

“41. The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the Code. It is not possible for us to hold that in such a case, the court cannot look into any documents produced by the accused or the public servant concerned at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking



cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea.”

6. In the case before us, the allegation is that the appellant exceeded in exercising his power during investigation of a criminal case and assaulted the respondent in order to extract some information with regard to the death of one Sannamma, and in that connection, the respondent was detained in the police station for some time. Therefore, the alleged conduct has an essential connection with the discharge of the official duty. Under Section 197 CrPC, in case, the government servant accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, the previous sanction is necessary.

7. The issue of “police excess” during investigation and requirement of sanction for prosecution in that regard, was also the subject-matter of State of Orissa v. Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104] , wherein, at para 7, it has been held as follows: (SCC pp. 46-47)

“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)

8. In *Om Prakash* [*Om Prakash v. State of Jharkhand*, (2012) 12 SCC 72 : (2013) 3 SCC (Cri) 472], this Court, after referring to various decisions, particularly pertaining to the police excess, summed up the guidelines at para 32, which reads as follows: (SCC p. 89)

“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* [*K. Satwant Singh v. State of Punjab*, AIR 1960 SC 266 : 1960 Cri LJ 410]). 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* [*State of Orissa v. Ganesh Chandra Jew*, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104]). 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 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood.”

(emphasis supplied)

9. In our view, the above guidelines squarely apply in the case of the appellant herein. Going by the factual matrix, it is evident that the whole allegation is on police excess in connection with the investigation of a criminal case. The said offensive conduct is reasonably connected with the performance of the official duty of the appellant. Therefore, the learned Magistrate could not have taken cognizance of the case without the previous sanction of the State Government. The High Court missed this crucial point in the impugned order.”

28. The Supreme Court in the case of ***D. Devaraja Vs.***

Owais Sabeer Hussain reported in (2020) 7 SCC 695 has held on paragraphs No. 66, 67, 68, 69, 70 and 71 which are given



below:-

“66. 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.

67. 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. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a policeman 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.

68. 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 the government sanction for initiation of criminal action against him.

69. 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.

70. 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.

71. 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.”

29. In view of the law laid down by the Supreme Court in the case of *Matajog Dubey Vs. H.C. Bhari (Supra)*, *Pukhraj Vs. State of Rajasthan and Another (supra)*, ***D. Devaraja Vs. Owais***



Sabeer Hussain (supra) I am of the opinion that the prosecution of the petitioners who are police officers and who were discharging their duties and they were investigating a sensational murder case cannot be prosecuted because the allegations levelled against the petitioners and Upendra Sharma is that during discharge of official duty, they are alleged to have committed some offences. The protection under Section 197 of the Cr. P.C. is available to the petitioners and Upendra Sharma as the alleged act done by them is reasonably connected with the discharge of their official duty.

30. Whatever has been alleged to have been done by the petitioners and Upendra Sharma was during the course of performance of their duty and they should be protected from facing frivolous and revengeful proceedings initiated at the hands of the complainant otherwise, it will be very difficult for a police official to investigate a case.

31. Moreover, the prosecution of the petitioners and Upendra Sharma appears to be a malafide prosecution initiated by the complainant who is the wife of an accused facing murder charges.

32. In view of the discussions made above, I am of the view that the prosecution of the three petitioners, namely, Rama



Shankar Singh, Arun Kumar and Rajeshwar Prasads in Complaint Case No. 855 (C)/2021 is malafide and the order taking cognizance is without obtaining sanction under Section 197 of the Cr. P.C. and therefore, the same cannot continue.

33. Similarly, the prayer of the complainant for quashing a part of the order dated 07.01.2023 taking cognizance by which no cognizance has been taken against Upendra Sharma also not to be interfered with as Upendra Sharma was also involved in his official duty, his prosecution as sought by the complainant is malafide and malicious and this kind of malicious prosecution should not be allowed in the light of the order judgment of the Supreme Court in the case of *State of Haryana Vs. Bhajan Lal* reported in *1992 Supp. (1) SCC 335*.

34. So far as the prayer of the petitioners in Cr. Misc. No. 32026 of 2023 is concerned, the same is allowed and the order dated 07.01.2023 passed by the Additional Chief Judicial Magistrate, 2nd, Patna in connection with Complaint Case No. 855(C)/2021 for the offences punishable under Sections 352/365/368/346/354/354A/354B/ & 120B of the Indian Penal Code whereby and whereunder cognizance has been taken under Sections 323 and 504 of the Indian Penal Code against the petitioners is hereby quashed.



35. The Cr. Misc. No. 14227 of 2023 is dismissed in view
of the above discussions.

(Sandeep Kumar, J)

Saif/-

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CAV DATE	01.08.2023
Uploading Date	13.12.2023
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