

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 2233 of 2017****IN THE MATTER OF****Md. Ali & Ors.****Vs.****The State of West Bengal****For the Petitioners : Mr. Rajendra Banerjee Adv.,****Judgment on : 31.08.2023****Subhendu Samanta, J.**

The instant Criminal Revision is preferred u/s 397,401 read with section 482 of the Code of Criminal Procedure against orders dated 20.04.2017 and 29.04.2017 passed by the Learned Additional Chief Judicial Magistrate, Rampurhat Birbhum, in connection with CR No. 332 of 2017 pending before the Learned Additional Chief Judicial Magistrate, Rampurhat, Birbhum.

The brief fact of the case is that the opposite party No. 2 has lodged a Criminal complaint u/s 200 of the Code of Criminal Procedure before the Learned ACJM Rampurhat alleging an offence committed by the present petitioner

punishable u/s 448/323/354 of IPC. It has been alleged in the petition of complaint that on 09.04.2017 at about 10:30 A.M. the petitioner no. 1 being the Officer in charge of the Nalhait police station and petitioner No. 2 being the sub- inspector of police of the said police station along with the force entered into the village and directed the opposite party no. 2 to abide by the direction passed by civil court in Title Suit no. 40 of 2017, it has been alleged they have been mercilessly beaten by petitioners along with the police force. At the time the opposite party no. 2 entered into his house but the petitioner no. 1 and 2 along with force bring out him from the house and on that way they have also been outraged the modesty of the women of their family. It has been alleged in the petition of complaint that there was a previous grudge between the complainant and the petitioners thus the incident was happened.

On receiving such complaint Learned Magistrate concern examined the witnesses on SA including the complainant and issued process against the present petitioners. Hence this instant criminal revision.

Learned Advocate for the petitioner submitted before this court that the present petitioner no. 1 and 2 are the police personnel and they are discharging their duties. To maintain piece and tranquillity of the locality the petitioner no. 1 and 2

reached the locality in obedience to the order of the Civil Court passed in title suit No. 40 of 2017. The petitioner no. 1 and 2 reached there with two vehicles of force. The incident initially happened when the plaintiff of title suit no. 40 of 2017 has lodged GDE being no. 413 before the petitioner no 1 contending inter alia that the present opposite party no. 2 had been violating order of Civil Court by constructing shed fitted with tin. After observing the apprehension of serious breach of peace at the locality, the petitioner no. 2 reached the spot with the police personnel and he has been prevented to proceed by unruly mob under the leadership of the present op no. 1. They prevented police personnel for discharging their official duties. Considering the furious mob petitioner no. 2 has informed the petitioner no. 1 through the mobile phone to rush to the spot along with force. On such telephonic information Nalhati PS case No. 99 of 2017 dated 09.04.2017 u/s 147/186/336/353/506 of IPC has been initiated against the present opposite party No. 2 and others.

The present petitioners being the police officers to tackle the entire situation used the force to disperse the mob. One Apilot Mandal alias Badsah was arrested.

Learned Advocate for the appellant submitted that the entire petition of complaint is an after-thought of the opposite

party no. 2. The police officer i.e. the petitioner no. 1 and 2 has used the force to discharge their official duties. It is the further submission of the Learned Advocate for the petitioner that the instant complaint is barred by law. Petitioner no. 1 and 2 being the public servant sanctioned by the State Government u/s 132 Cr.P.C is required to be obtained before initiation of the prosecution. He prayed for discharge.

Learned Advocate for the State submitted before this court that the Learned Magistrate after receiving the complaint u/s 200 of Cr.P.C. has examined the complainant along with other witnesses u/s 202 Cr.P.C and after finding the prima facie materials, has issued the process. He submitted that there are illegality in the impugned order. However he admits that the sanction u/s 132 Cr.P.C is required to be obtained prior to initiation of prosecution against a police officer.

Heard, the Learned Advocate perused the materials on record. The sole question involved in the instant of criminal revision is that whether the petitioner no. 1 and 2 being the public servants (police officer) were discharging their official duties under Chapter IX of the Code of Criminal Procedure. If it is true then the instant criminal proceeding pending against the petitioners is liable to be quashed.

Hon'ble Supreme Court in that score in a decision of **Nagraj Vs. State of Mysore reported in AIR 1964 Supreme Court 269** has held that the prosecution of police officers discharging duties u/s 127,128 of Cr.P.C is required sanction u/s 132 of the Cr.P.C.

The whole issue therefore, upon the question whether the occurrence took place as alleged by the complainant or otherwise; that is to say, whether he sustained injuries in the manner alleged by him or whether he sustained injuries when the police used force in dispersing of an unlawful assembly.

To determine the question I have perused the petition of complaint wherein present order of Civil Court passed in title suit no. 40 of 2017 was mentioned. The complainant has admitted that the petitioner no. 1 and 2 are the police personnel. The FIR of Nalhait PS case no. 99 of 2017 is perused. It appears from the FIR that on the date of incident the police party reached the spot along with the petitioner no. 1 after telephonic information of petitioner no. 2; it has been observed by the police personnel at the spot that the present opposite party no. 2 along with one Apilot Mandal and 06 others were forcibly doing the construction work in the land in question. They asked the complainant and others to abide by the law; on such, mob became furious and start throwing brick

bats at the police and also using filthy languages. Thereby they formed unlawful assembly and attacked upon the police on duty to prevent them from discharging the lawful duty. Finding no other alternative, the petitioner no.1 has declared them as unlawful assembly and order them to be dispersed. The violated mob disputed the direction of the police continued to throw brick piece. They were chasted and managed to arrest one Apilot Mandal Alias Badsah, others fled away. Apilot Mandal Alias Badsah was arrested along with 06 others. the injury sustained by the police personnel was mentioned in the formal portion of the FIR.

So after perused the FIR Nalhati PS Case No. 99 of 2018 it appears to me that the petitioners no. 1 and 2 are actually discharging their lawful duties under Chapter (ix) of the Code of Criminal Procedure.

The question to discharge the police personnel from criminal prosecution during a criminal proceeding is raised before the Hon'ble Supreme Court in **Nagraj** (supra) Paragraph 18 of the **Nagraj** is set out to answer the question

The last question to consider is that if the Court comes at any stage to the conclusion that the prosecution could not have been instituted without the sanction of the Government what should be the procedure to be followed by it, i.e whether the Court should discharge the accused or acquit him of the charge if framed against him or just drop the proceedings and pass no formal order of discharge

or acquittal as contemplated in the case of a prosecution under the Code. The High Court has said that when the Sessions Judge be satisfied that the facts proved bring the case within the mischief of S. 132 of the Code then he is at liberty to reject the complaint holding that it is barred by that section. We consider this to be the right order to be passed in those circumstances. It is not essential that the Court must pass a formal order discharging or acquitting the accused. In fact no such order can be passed. If S. 132 applies the complaint could not have been instituted without the sanction of the government and the proceedings on a complaint so instituted would be void, the Court having no jurisdiction to take those proceedings. When the proceedings be void the Court is not competent to pass any order except an order that the proceedings be dropped and the complaint is rejected.

After considering the entire facts and circumstances of this case after perusing the provision of Section 132 of Cr.P.C. It appears to me that public servant shall not to prosecute without the sanction by the competent authority for any offence alleged to have been committed by them while acting or purporting to act in discharge of their official duties. The object obviously is to protect responsible public servants against the institution of possibly vexsesus criminal proceeding for offence alleged to have been committed by them while they were acting or purporting act as public servants. In this case the criminal proceeding was initiated in violation of Section 132 of the Code of Criminal Procedure.

In following the decisions of Hon'ble Supreme Court passed in State of **Hariyana Vs. Ch. Bhajanlal**. It is within the ambit of the petition u/s 482 Cr.P.C of a High Court to quash a criminal proceeding when it is barred under the provisions of any law.

So after considering the entire materials on record and after considering the submission of the Learned Advocates it appears to me that the instant criminal revision has got merit to entertain.

CRR is allowed.

The entire Criminal proceeding pending before the Learned ACJM Rampurhat, Birbhum being no. CR 332 of 2017 against the present petitioners is hereby quashed.

CRR is disposed of.

Connected CRAN applications if pending are also disposed of.

Any order of stay passed by this court during the continuation of the instant criminal revision is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)