

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

35 CRIMINAL WRIT PETITION NO.811 OF 2022

**RAMA SHANKAR HARI CHARAN SINGH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.R.S. Kasar, Advocate for the petitioner.

Mr.PN. Kutti, APP for the respondent/State.

Mr.A.G. Talhar, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 21.03.2023**

PC :-

01. Heard learned Advocates for the parties. The petition is taken up for final disposal.

02. The petition is by the original complainant, who had filed complaint against the respondents, who happened to be a Major and Colonel in the armed forces respectively, for the offences punishable under sections 323, 341, 342, 504, 506 r/w section 54 of the Indian Penal Code. The learned Court of JMFC by order dated 04.01.2020 was pleased to direct the complainant to place on record further oral testimony for consideration to issue process. by order dated 15.01.2020 the Court issued process. This order

was challenged by respondent No.1 by filing Criminal Revision No.26 of 2021 in the Court of learned Sessions Judge, Ahmednagar. The learned Sessions Judge mainly observing that since both the accused persons happens to be persons of the armed forces, it was necessary to obtain sanction under section 197 of the Cr.P.C. before taking cognizance of the complaint against them and allowed the revision application and quashed the order of issuance of process by order dated 31.03.2022. The complainant was also further directed to deposit Rs.3000/- towards costs. It is this order which is impugned in this petition.

03. The facts in short are that the petitioner claims to be retired army personnel, residing at Ahmednagar. He had filed various cases in respect of village road before the authorities like Tahsildar, Sub-Divisional Officer etc. and those are pending since 2012. However, on 07.09.2019 he alleged that the present respondents blocked the said village road. When this petitioner went to request them not to close/block the road, they assaulted and abused the petitioner.

04. The learned Advocate for the petitioner submits that thus when

the complaint was clearly made out against the accused persons and there is nothing to show that the respondents had committed this alleged offence in discharge of their official duty, he submits that the learned Sessions Judge has wrongly observed that sanction under section 197 of the Cr.P.C. was necessary. He further submits that taken the case as it is, question of sanction can be gone into even at a later stage of the trial and for that the complaint need not be quashed and set aside. The complainant in any case ought to have been given opportunity to prove the case. In support of his submission, he relied upon order passed by this Court in **Cr. W.P. No.553 of 2004 dated 29.11.2016 in case of Bharat Asaram More Vs. Yadavrao Damu Patil & Ors.**, wherein this Court has observed that the provisions of section 197 of the Cr.P.C. do not create absolute bar in taking cognizance of the complaint against a public servant. It is observed that the bar operates only when the complaint is against the public servant in respect of the act done or purported to be done in discharge of official duty.

05. The next judgment he relied upon is the judgment reported in **AIR 2001 SC 2547 in the case of R.K. Pradhan Vs. State of Sikkim represented by CBI.** The Hon'ble Apex Court in the said case had observed that for

invoking prayer under section 197 of the Code, the acts of the accused complained of must be such that same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required.

06. In both the above judgments discussed above, it was held that point of sanction can be gone into even at later stage of the trial.

07. The learned Advocate for the respondent has invited attention of this Court to the fact that there is dispute pending between the petitioner and the Station Head Quarter, Bhingar, Ahmednagar. He thus submits that in view of the dispute it was duty of the respondent officer to protect the property of the Military from encroachment. It was found that the present petitioner was indulged into activity of encroaching upon properties belonging to the Military and therefore they stopped such activity and for that now the complaint is lodged. He further invited attention to the minutes of meeting dated 09.12.2019, wherein issue of encroachment was discussed and Armed Station Work Shop was directed to put fencing to control existing encroachment and

prevent any further encroachment in their property.

08. By looking at the facts, it is clearly seen that there are disputes pending between the complainant and the Station Staff Officer before various authorities since 2012. Even Revision Application No.6 of 2018 was decided by order dated 09.09.2019 against the petitioner. It is specific contention of the respondent that only because this judgment went against the petitioner, he has lodged the complaint on 04.10.2019, though the incident alleged is dated 07.09.2019. He further submits that even Army Static Workshop was required to file complaint against the petitioner in the police station on 18.11.2019, as the petitioner has obstructed working of the Army. Even there is allegation that he uprooted fencing that was placed by the present respondents. The petitioner abused the authorities of the forces.

09. Looking to these facts and the submissions, this Court finds that admittedly there is dispute going on before the revenue authorities in respect of the road between the parties. The incident has taken place about the said road. The respondents have no reason to go to the place of the petitioner. On the contrary, it is seen that they are only trying to protect their property by

putting fencing. If they are doing their work, certainly that was work in respect of discharge of official duty. This Court finds that the learned Sessions Court has rightly observed that sanction under section 197 of the Cr.P.C. is necessary. This Court finds that the learned Sessions Judge has rightly passed the order. No illegality or perversity is pointed by the learned Advocate for the petitioner. Though it is submitted that the revision was filed by one of the accused, still entire complaint is set aside. This Court finds that the revisional Court has ample powers even to take suo-moto cognizance of the order. This Court finds no merit in the submissions of the learned Advocate for the petitioner.

10. Hence, the petition is dismissed with no order as to costs.

[KISHORE C. SANT, J.]