

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR No.2634 of 2009
Date of Decision:06.02.2023**

Harjit Singh	Petitioner
Vs.	
State of Punjab	Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. R.S. Bains, Senior Advocate with
Mr. Sourabh Bedi, Advocate for the petitioner.
Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

FIR No.100 dated 28.09.1998 was registered at Police Station City Gurdaspur under Sections 224, 225, 212, 216 and 120-B of IPC on the complaint of Superintendent, Central Jail, Gurdaspur.

2. Allegations are that on 28.09.1998, one life convict Dilbagh Singh was produced in the Court of Sessions Judge, Gurdaspur along with four under-trial prisoners. They were taken from the jail by petitioner – ASI Harjit Singh as In-charge of the Police Escort Party. Although the four under-trial prisoners were lodged back in the jail but not Dilbagh Singh. On the complaint of Superintendent, Central Jail, Gurdaspur, FIR was lodged. During investigation, 15 officials were found to be responsible for the escape. Those 15 persons along with Dilbagh Singh were put to trial.

3. Learned Chief Judicial Magistrate, Gurdaspur vide judgment dated 08.11.2005 in Criminal Case No.11 of 1999 convicted four police officials including petitioner besides the escaped prisoner Dilbagh Singh and acquitted others. Four accused including petitioner – ASI Harjit Singh were convicted under Section 223 IPC; whereas Dilbagh Singh was convicted under Section 224 IPC. Vide separate order of the even date,

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petitioner and similarly placed three officials were sentenced to undergo rigorous imprisonment for a period of two years and to also pay fine of ₹ 2,000/- each with default sentence for commission of the offence under Section 223 IPC.

4. As evident from the record, petitioner and three others as convicted by trial court, filed separate appeals against their conviction, which were heard together by learned Additional Sessions Judge (Ad hoc) Fast Track Court, Gurdaspur, who vide judgment dated 04.09.2009 accepted the appeal of convicts Constable Karnail Singh, Kabal Singh and Constable Bikramjit Singh and acquitted them of all the charges. However, appeal of petitioner – ASI Harjit Singh was dismissed.

5. It is against the aforesaid judgment dated 04.09.2009 passed by learned Additional Sessions Judge, Gurdaspur; and the judgment of conviction/ order of sentence dated 08.11.2005 of learned Chief Judicial Magistrate, Gurdaspur that this revision has been preferred.

6. Although various grounds have been pleaded to assail the impugned orders but the only ground urged before the Court is that no sanction was taken by the prosecution against the petitioner for launching the prosecution, which was mandatory as per Section 197 of the Code of Criminal Procedure besides Rule 16.38 of the Punjab Police Rules. It is contended by learned counsel that petitioner has been convicted only on the ground that he was in-charge of the Police Escort Party, which had taken the prisoner Dilbagh from Central Jail, Gurdaspur to the Court. It is urged that even if the prosecution allegations are assumed that there was negligence on the part of the petitioner, the act or omission on his

part was in the discharge of his official capacity and so, sanction to prosecution under Section 197 Cr.P.C was mandatory to be obtained before launching the prosecution. Learned counsel has relied upon ***Devinder Singh and Others Vs. State of Punjab through CBI, (2016) 12 SCC 87*** and ***Centre for Public Interest Litigation and another Vs. Union of India (UOI) and another, (2005) AIR (SC) 4413***.

7. On the other hand, it is argued by learned State Counsel that in the facts and circumstances of the case, Section 197 of the Cr.P.C has no application.

8. After considering submissions of both the sides, I find merit in the contention raised by learned counsel for the petitioner.

9. Section 197 Cr.P.C reads as under:-

“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;

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

(2) to (4) xxxxxxxxxxxxxxxx (not relevant) ”

10. In **Devinder Singh and Others (supra)**, while discussing the scope of Section 197 Cr.P.C, it has been held by Hon'ble Supreme Court as under:-

“37. The principles emerging from the aforesaid decisions are summarized hereunder:

I. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

II. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent [Section 197](#) CrPC has to be construed narrowly and in a restricted manner.

III. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under [section 197](#) Cr.P.C. There cannot be a universal rule to determine whether there is reasonable nexus

between the act done and official duty nor it is possible to lay down such rule.

IV. In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary under [Section 197](#) CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of [Section 197](#) CrPC would apply.

V. In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

VI. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.

VII. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

VIII. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during

trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty was. Accused has the right to lead evidence in support of his case on merits.

IX. In some case it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.”

11. In **Central for Public Interest Litigation's case (supra)**, it has been observed by Hon'ble Supreme Court as under:-

“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 from 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. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while

acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

Use of the expression, 'official duty' implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

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 official to which applicability of Section 197 of the Code cannot be disputed.

Above position was highlighted in *R. Balakrishna Pillai v. State of Kerala* (AIR 1996 SC 901), *State of M.P. v. M.P. Gupta* (2004 (2) SCC 349), *State of Orissa through Kumar Raghvendra Singh & Ors. v. Ganesh Chandra Jew* (JT 2004 (4) SC 52) and *Shri S.K. Zutshi and Anr. v. Shri Bimal Debnath and Anr.* (2004 (8) SCC 31).”

[under-lined portion emphasized by this court]

12. Applying the above said legal position to the facts of the present case, it is not the case of the prosecution that the petitioner was instrumental in escape of prisoner Dilbagh. He has been held negligent

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for escape of Dilbagh, simply because of the reason that he was In-charge of the Police escort party. It is admitted case of the prosecution that apart from escaped prisoner Dilbagh, four more under-trial prisoners were taken from the jail to the Court of Sessions and at that time, petitioner was accompanied by other Police officials as well. Even if it be assumed that petitioner was negligent in performing his duty and he failed to take proper care in respect of the custody of the prisoner Dilbagh, the said dereliction of duty on his part, will be within the scope of his official duties because at the time when petitioner picked Dilbagh from jail for his production in the Court and at the time when Dilbagh escaped, petitioner was discharging his official duties. Because of the omission on the part of the petitioner to take proper care, it cannot be stated that he was not performing the official duties as a public servant.

In view of the aforesaid factual position, the legal position explained by Hon'ble Supreme Court in **Central for Public Interest Litigation's case (supra)** is fully applicable.

13. In view of the aforesaid discussion, the impugned judgment of learned Additional Sessions Judge and that of learned Chief Judicial Magistrate, Gurdaspur cannot be sustained and so, the same are set aside. Petitioner is acquitted of the charges.

February 06, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No