

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.6449 of 2012 (O&M)
Date of decision: 20th July, 2023

Dilawer Singh

... Petitioner

Versus

Nihal Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. V.K. Jindal, Senior Advocate with
Mr. Arman Goyal, Advocate for the petitioner.

Mr. Jai Vir Yadav, Senior Advocate with
Mr. Tarun Yadav and Mr. Aman Gautam, Advocates
for the respondent.

MANJARI NEHRU KAUL, J.

1. The petitioner is impugning the order dated 27.02.2008 (Annexure P-4) passed by the learned Judicial Magistrate 1st Class, Rewari and order dated 22.09.2011 (Annexure P-6) passed by learned Additional Sessions Judge, Rewari, vide which the respondent was discharged in criminal complaint No.133 dated 05.06.2002 filed under Section 190(1)(a) of the Cr.P.C. for the commission of offences punishable under Sections 166, 167, 219, 466, 468, 469, 471, 500 IPC.

2. Learned senior counsel appearing on behalf of the petitioner, inter alia contends that while the petitioner was posted as Assistant Food & Supplies Officer, Rewari in the year 1997-98, the

respondent, who at that time was also posted as District Food & Supplies Controller, Rewari, wrote a false DO letter bearing No.SPL 1-2 dated 18.12.1997 to the Director, Food & Supplies, Haryana, Chandigarh and a copy of the same was also clandestinely sent to the Minister, Food & Supplies, Haryana in blatant violation of the service rules and instructions. As a result of the letter sent, the petitioner was placed under suspension on 31.12.1997. Subsequently, he was chargesheeted under the Haryana Civil Services and Punishment Rules, 1987, which was then followed by a regular departmental enquiry. Since all the allegations levelled against the petitioner were found to be baseless, the enquiry officer exonerated him. During enquiry, some illegalities were found on the part of the respondent qua which the enquiry officer made a mention in his report. However, despite the enquiry officer finding illegalities on the part of the respondent, the competent authority still imposed penalty of warning upon the petitioner. The petitioner challenged the penalty of warning which had been imposed upon him before the Appellate Authority. The same was accepted and punishment of warning quashed. Thereafter, a civil suit was instituted by the petitioner to challenge his suspension order dated 31.12.1997. The learned Civil Court while decreeing the suit with costs observed that the allegations levelled against the petitioner smacked of malafides. Feeling offended, the respondent, who was the immediate superior officer of the petitioner, while writing his Annual Confidential

Report (ACR) for the year 1997-98, recorded adverse remarks against the petitioner and intentionally assessed the integrity of the petitioner as doubtful, so as to create obstacles in the petitioner's promotion. Aggrieved, the petitioner preferred CWP No.6387 of 2001 before this Court. A representation was also made before the Commissioner, Food & Supplies, Haryana, Chandigarh. Ultimately, the representation of the petitioner was allowed and the adverse remarks, which had been recorded with malafide intentions by the respondent, were ordered to be expunged by the Commissioner, Food & Supplies, Haryana.

3. Learned senior counsel has vehemently argued that while passing the impugned orders, both the Courts below had gravely erred in not appreciating the correct proposition of law. He has submitted that the Hon'ble Supreme Court has time and again, observed that no sanction would be required for prosecuting a public servant for an offence of cheating, preparation of false records, and misappropriation of public funds. He submits that preparation of false records and misappropriation of public funds by a public servant would not fall within the ambit of "official duty". He submits that on this ground itself, the respondent/complainant ought not to have been discharged, as it was evident from the sequence of events right after he sent out false and frivolous letters to the Director, Food & Supplies, and followed it up by willfully trying to harm the petitioner by fabricating false reports about his integrity etc.

4. Learned senior counsel appearing on behalf of the respondent, on the other hand, submits that the DO letter in question had been sent by the respondent in his capacity as a superior officer of the petitioner. The DO letter had been written by the respondent to report insubordination by the petitioner, because when the petitioner was deputed for election duty, he disobeyed these orders, and instead proceeded on leave. Learned counsel further submits that the respondent had merely recommended the transfer of the petitioner and not his suspension. Pursuant to the DO letter, an enquiry was conducted wherein the Director, Food & Supplies, Haryana proposed a sentence of warning against the complainant. Therefore, from the sequence of events, it was abundantly clear that the DO letter, sent by the respondent, was purely in the discharge of his official duties.

5. Still further, it has been urged that the respondent being the immediate superior of the petitioner, was authorized to write his ACRs, therefore, even the ACR in question had been prepared by the respondent while discharging his official duties.

6. Learned senior counsel for the respondent has thus asserted that in the aforementioned facts, the respondent was entitled to protection under Section 197 Cr.P.C. as it was evident that all the acts alleged in the complaint had been performed by the respondent only in his official capacity while discharging his duties. Therefore, the

impugned orders did not warrant any interference as the Courts below had rightly appreciated the aforesaid facts and discharged him.

7. I have heard learned counsel for the parties and perused the relevant material on record.

8. While considering the discharge of an accused, the Court on the basis of the material before it, must prima facie arrive at an opinion that even if the entire version put forth by the complainant/prosecution is taken to be true, no case for commission of offences alleged by the accused would be made out against him. In the instant case, the respondent has been discharged by the Court below for want of sanction under Section 197 Cr.P.C. For facility of reference, Section 197 Cr.P.C. is reproduced below:

“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.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

9. Section 197 Cr.P.C. provides for protection to Judges and Public Servants from prosecution against any act committed by them while acting or purporting to act in the discharge of their official duties.

There is a bar on the Court from taking cognizance in the absence of the previous sanction of the authorities, as is evident from a perusal of the provisions of Section 197 Cr.P.C. In this regard, the Hon'ble Supreme Court in '**A. Srinivasulu vs. The State rep. by The Inspector of Police**' 2023 Livelaw SC 485, while reiterating the law laid down in '**Devinder Singh v. State of Punjab through CBI (2016) 12 SCC 87**', has observed as under:

*“41. In **Devinder Singh vs. State of Punjab through CBI (2016) 12 SCC 87**, this Court took note of almost all the decisions on the point and summarized the principles emerging therefrom, in paragraph 39 as follows:*

“39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. 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.

39.2. 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.

39.3. 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 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. 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 6 (2005) 4 SCC 512 7 (2006) 1 SCC 557 8 (2016) 12 SCC 87 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.

....”

*42. In **D. Devaraja vs. Owais Sabeer Hussain (2020) 7 SCC 695**, this Court explained that sanction is required not only for acts done in the discharge of official duty but also required for any act purported to be done in the discharge of official duty and/or act done under colour of or in excess of such duty or authority. This Court also held that 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.”

Thus, what flows from the various pronouncements of the Hon’ble Apex Court is that protection under Section 197 Cr.P.C. would be available to an accused i.e. a public servant, even if he may have exceeded his duty, provided it had a reasonable connection with the same.

10. Adverting to the case in hand, it appears that the DO letter was apparently written by the respondent to bring to the notice of the higher authorities the alleged dereliction of duties and insubordination by the petitioner. It is therefore, clear that the DO letter was sent by the respondent while acting in the discharge of his official duties. A perusal of the file further reveals that the respondent had not recommended the suspension of the complainant, but had just suggested for his transfer. However, the complainant was suspended by the Director, Food & Supplies, Haryana. Still further, it is certainly not the case of the complainant that the respondent was not authorized to write his ACRs. Rather, the respondent being the immediate superior officer of the complainant was duly authorized to write his ACR. The ACR in question cannot be termed as ‘false and fabricated’ as alleged by the complainant. It appears that the complainant is aggrieved because certain unfavourable remarks had been recorded by the respondent against him in the ACR.

11. Even if the petitioner was subsequently exonerated and the warning as well as adverse remarks were expunged, it would not negate the fact that while writing the DO letter as well as the ACR, the respondent was acting in the discharge of his official duties and thus, was entitled to protection under Section 197 Cr.P.C.

12. As a sequel to the above discussion, this Court finds no merit in the instant petition. The same as such stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

July 20, 2023
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No