

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-44680-2021

Reserved On: 30.11.2023

Pronounced On: 08.12.2023

Muniya Devi

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Vaibhav Sharma, Advocate
for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., prayer is made to quash criminal complaint bearing No.CRM/18/2018 dated 17.01.2018 (Annexure P-1) under Section 195(1)(a) Cr.P.C. for the commission of offences under Sections 176, 177, 181, 191, 192 & 193 of the IPC pending before the Court of learned CJM, Mewat including summoning order dated 19.01.2018 (Annexure P-2) and all the subsequent proceedings arising therefrom.

2. On perusal of the paper-book, it emerges that **Irshad** son of Khalil; and **Sahina** wife of Irshad, the accused involved in case FIR No.07 dated 19.01.2016 registered at Women Police Station, Nuh under Sections 365 & 376-D of the IPC, were declared proclaimed offender vide order dated 17.05.2017. Both of them applied for anticipatory bail on 16.11.2017 before the Court of learned Additional Sessions Judge, Nuh, which was dismissed by the Court on 05.12.2017 after observing that both of them i.e., Irshad and Sahina had

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concealed the fact that they had earlier been declared proclaimed offender. Later on, both of them filed second petition seeking anticipatory on 11.01.2018, again concealing the fact that they had earlier been declared proclaimed offender.

3. During the proceedings of the second bail petition, reply was filed by petitioner - Muniya Devi, who was posted as SHO Women Police Station, Nuh at the relevant time and in that reply, she too did not disclose before the Court that Irshad and Sahina had been earlier declared proclaimed offender.

4. Vide detailed order dated 17.01.2018 (Annexure P-1), not only the bail petition was dismissed, the Court of learned Additional Sessions Judge (Exclusive Court) (Crime Against Women), Nuh ordered for proceeding against petitioner- Muniya Devi apart from Irshad and Sahina under Section 195(1)(a) Cr.P.C. in accordance with law. Complaint was accordingly filed for the commission of offences under Sections 176, 177, 181, 191, 192 & 193 of the IPC, in the Court of learned Chief Judicial Magistrate, Nuh and vide order dated 19.01.2018 (Annexure P-2), learned Duty Magistrate ordered issuance of the notice to the accused including petitioner- Muniya Devi.

5. Seeking quashing of the aforesaid complaint dated 17.01.2018 and the consequential proceedings including the summoning order dated 19.01.2018, it is contended by learned counsel for the petitioner that petitioner is a Member of Haryana Police service, serving as a Sub-Inspector and at the relevant time, she was posted as Station House Officer of Nuh, Police Station Nuh. Learned counsel for the petitioner has disclosed about the circumstances, in which details about the accused Irshad and Sahina having been declared proclaimed offender, were not mentioned in the reply filed by the petitioner, since investigating officer of the case was not available at the relevant time and the Court was asking for filing of

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the report immediately. The main contention raised by learned counsel is that no sanction, as required under Section 197 Cr.P.C., has been obtained from the State Government, before filing the complaint against the petitioner and therefore, no Court can take cognizance of an offence. Learned counsel has referred to “***CRR-1274-2015 (P&H) titled as Vijay Kumar v. State of Haryana, decided on 19.03.2018; D. Devaraja v. Owais Sabeer Hussain (2020) 7 SCC 695; & Moti Lal Banerjee v. State of Haryana 1985(2) RCR (Criminal) 570***”.

6. Reply has been filed on behalf of respondent- State. Stand taken by learned State counsel is that since the complaint was filed by the Court, so no sanction under Section 197 Cr.P.C. was required for filing the complaint or for taking cognizance.

7. I have considered submissions of both the sides and have perused the record carefully.

8. Relevant part of Section 197 Cr.P.C. reads as under:

“197 (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.”

9. Haryana Government vide notification dated 25.07.1980 bearing No.41/20/79HGI, has extended the benefit of Section 197(2) Cr.P.C to all serving

police officials. The relevant extract is as under:

“In the exercise of the power conferred by sub-section (3) of Section 197 of the Code of Criminal Procedure 1973 (Central Act 2 of 1974), the Governor of Haryana hereby directs that the provisions of sub-section (2) of the said Section shall apply to serving police officials of all ranks of the Haryana Police force charged with the maintenance of public order.”

10. After referring to Section 197(2) and 3 Cr.P.C. and the aforesaid notification dated 25.07.1980 of Haryana Government, besides **ASI Balbir Singh vs. State of Punjab, 1993 (1) RCR (Criminal) 315**, it has been held by this Court in **Vijay Kumar v. State of Haryana (supra)** as under:

*“Thus, on a plain reading of the aforesaid notification, it is abundantly clear that the State Government in exercise of powers conferred by sub-section (3) of Section 197 of the Code of Criminal Procedure 1973 has issued a notification directing that provisions of sub-section (2) of the said section shall apply to serving police officials. In another words, before launching any prosecution against any person who is a public servant and discharging his duties, sanction has to be given by the State Government and not by his appointing authority. In **ASI Balbir Singh’s case (supra)** it has been held as under: -*

10. It is thus apparent that the State Government in exercise of powers under sub-section (3) of the Code of Section 197 of the Code of Criminal Procedure has issued this notification directing that the provisions of sub-section (2) ibid shall apply to serving police officials. In other words, before launching prosecution under Section 197 of the Code of Criminal Procedure against serving police officials, the sanction of the State Government (and not merely of the Superintendent of Police as in the instant case) was required with effect from 5.5.1983, viz., the date of this notification. The learned counsel for the petitioners, therefore argued that the prosecution against the petitioners is liable to be quashed for want of a valid sanction to be accorded by the respondent No. 1, in accordance with the above referred Notification. The learned Assistant Advocate General was unable to show that any valid sanction had been accorded by the State Government for the prosecution of the petitioners under Section 197(2) of the Code of Criminal Procedure having regard to the

Notification of the Punjab Government dated 5.5.1983 referred to above. The contention of the learned Counsel for the petitioners appears to be well founded that the sanction for the prosecution of the petitioners in this case should have been accorded by the State Government and not by respondent No.2, even though the latter is their appointing authority. The final report under Section 173 of the Code of Criminal Procedure filed against the petitioners is, therefore, also liable to be quashed because of the non-compliance of the provisions of Section 197 (2) of the Code of Criminal Procedure. However, the State Government is not precluded from launching prosecution against the petitioners afresh after valid sanction has been accorded for the prosecution of the petitioners under Section 197 (2) of the Code of Criminal Procedure keeping in view the Notification issued by the State Government on 5.5.1983.”

11. Still further, in ***D. Devaraja v. Owais Sabeer Hussain*** case (*supra*), it has been held by Hon’ble Supreme Court as under:

“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.

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.”

12. Besides above, in ***Moti Lal Banerjee v. State of Haryana*** case (*supra*), it has been held by this Court as under: -

“It is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority after it has been satisfied that a case for sanction has been made out constituting the offence. The grant of sanction is not an idle formality or an acrimonious but a solemn and sacrosanct act which

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affords a protection to Government servants against frivolous prosecution and must, therefore, be strictly complied with before any prosecution and must, therefore, be strictly complied with before any prosecution can be launched against the public servant concerned.”

13. In the light of the legal position as above, when the facts of the present case are analyzed, it is seen that even if it be assumed that petitioner by filing reply to bail petition of Irshad and Sahina, deliberately or negligently, did not mention the fact about these accused having been earlier declared as proclaimed offender, the reply had been filed by the petitioner while discharging her duties as a public servant. Thus, the act of the petitioner had a clear reasonable connection with her official duties. In these circumstances, sanction under Section 197(3) Cr.P.C. from the Government of Haryana was necessary to be obtained in view of the notification dated 25.07.1980 of Haryana Government as referred earlier.

14. Since in the present case, no such sanction has been obtained before filing the complaint bearing No.CRM/18/2018 dated 17.01.2018 (Annexure P-1) or before taking passing order dated 19.01.2018 Annexure P2, therefore, cognizance could not have been taken by the learned Magistrate.

15. As such, it is held that the complaint Annexure P-1 and the impugned order dated 19.01.2018 (Annexure P-2) cannot be sustained in the eyes of law qua the petitioner. Consequently, said complaint (Annexure P-1), summoning order (Annexure P-2) and all the subsequent proceedings arising therefrom, qua the petitioner, are hereby quashed.

December 08, 2023

Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No