

**The High Court at Calcutta
In Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction**

Present :- Hon'ble Justice Amrita Sinha

CRR 42 of 2024

Dipankar Sarkar

Vs.

The State of West Bengal & Ors.

For the petitioner :- Mr. Arnab Saha, Adv.

Heard on :- 30.01.2024 & 01.02.2024

Judgment on :- 02.02.2024

Amrita Sinha, J.:-

In the instant application the petitioner has prayed for quashing the criminal proceeding being Special Case no. 1 of 2023 arising out of Alipurduar Police Station Case no. 317 of 2023 dated 24th September, 2023 under Sections 467/468/471/477A/409/420 of the Indian Penal Code, 1860 read with Section 13(1)(A) of the Prevention of Corruption (Amendment) Act, 2018 pending before the learned Special Court-cum-District & Sessions Judge, Alipurduar.

The ground agitated by the petitioner for quashing the aforesaid proceeding is that the said proceeding cannot and ought not to be initiated against the petitioner without obtaining sanction of the Government as he is a public servant.

The petitioner is serving as a constable of West Bengal Police and he claims to be a public servant within the meaning of Section 21 of the Indian Penal Code. It has been submitted that the proceeding initiated against the petitioner is untenable as he is protected under Section 197 of the Code of Criminal Procedure, 1973. The petitioner stresses upon the aforesaid Section and submits that as the petitioner is a public servant and he was performing public duty, accordingly, prior to initiating any criminal proceeding against him, sanction ought to have been taken from the Government. As no sanction has been taken prior to initiating the subject proceeding, the same is bad in law and is liable to be set aside.

The allegation against the petitioner is that he is involved in serious financial misappropriation of funds siphoned from several civic volunteers' wages amounting to rupees nine lakh fifty thousand and more from eight police stations under the jurisdiction of Alipurduar police. The petitioner was delegated to operate the Human Resource Management System for every salary and non salary bill of police personnel and civic volunteers in the district of Alipurduar. The user ID, password and digital signature certificate was given only to him by the DDO since the beginning of the HRMS system. The petitioner was also dealing with the salary and non salary bills of the office of the Superintendent of police, Alipurduar.

An enquiry was conducted which revealed that wages of various civic volunteers was deposited in the bank account of the petitioner and other persons related to him. Bills of the civic volunteers who were absent from

duty were generated and the money was deposited in the account of either the petitioner or his relatives. In this manner the wages of the employees were siphoned.

On the aforesaid allegation FIR was lodged and the petitioner was arrested on 24th September, 2023. He was produced before the learned Chief Judicial Magistrate, Alipurduar on 25th September, 2023 and remanded to police custody. Search and seizure was made and charge sheet filed against him on 21st December, 2023.

The sheet anchor of the petitioner's contention is that without obtaining sanction under Section 197 Cr.P.C., the petitioner cannot be prosecuted. The petitioner relies upon the expression 'public servant' mentioned in Section 21 of the Indian Penal Code and submits that, as he is on the pay roll of the Government for performance of public duty of the Government, accordingly, without obtaining sanction from the Government the prosecution against the petitioner cannot continue.

Prayer has been made for quashing the proceeding initiated against him.

Whether the petitioner who claims to be a public servant can be prosecuted without any sanction of the Government is to be decided.

Section 197(1) Cr.P.C., inter alia, lays down that when 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 of the State Government.

Section 197 Cr.P.C. uses the expression 'not removable from his office save by Government'. The service Rules of the petitioner does not require any sanction from the Government for his removal from service. The petitioner, being a police constable, is not required to be removed by the Government. He can be removed by his appointing authority without the sanction of the Government. As such, the contention of the petitioner that sanction of the Government is required prior to prosecuting him does not appear to be the proper appreciation of law.

The Hon'ble Supreme Court, as far back as in the year 1964, was pleased to hold, in the facts and circumstances of the case, that an Inspector or Sub-inspector of police or a constable may be removed by the Inspector General or the Superintendent of Police and no sanction is necessary for the same. (***Nagraj vs. State of Mysore; AIR 1964 SC 269***). The same principle will apply in the case at hand.

In ***Sant Kumar vs. State of Punjab*** reported in **(2003) CrLJ 2949** the Hon'ble Supreme Court held that where the Sub-inspector and Assistant Sub-inspector are removable from service by the Superintendent of Police who is their appointing authority, they are not entitled to the protection under Section 197 Cr.P.C. In the present case also the petitioner may be

removed from service by the order of the superior officer and there is no requirement of obtaining separate sanction from the Government.

The same implies that the public servant who may be removed by a superior authority and not by the Government will not get the protection of Section 197 Cr.P.C. A police constable can be removed from service without sanction of the Government by initiating a regular disciplinary proceeding and, accordingly, the petitioner will not get the benefit of the aforesaid provision.

The petitioner stresses that the impugned order of cognizance is bad. Provisions of the Prevention of Corruption Act, Indian Penal Code and the Criminal Procedure Code were not followed at the time of taking cognizance. It has been repeatedly contended that investigation has been carried out in a predetermined manner targeting the petitioner. The investigation has not been carried out by the competent person. Amongst all the employees it is only the petitioner who has been implicated in the proceeding.

The Hon'ble Supreme Court of India in ***A.Sreenivasa Reddy vs. Rakesh Sharma & Anr.*** reported in ***(2023) 8 SCC 711: 2023 SCC Online SC 952*** held that Section 197 Cr.P.C. will be attracted only in respect of the public servants who may be removed with the sanction of the Government. A public servant, if may be removed without sanction of the Government, will not get the benefit of Section 197 Cr.P.C. Whether the delinquent public servant was acting in discharge of his official duty is not required to be gone

into when he does not fulfil the conditions for applicability of Section 197 (1) Cr.P.C.

The Court held that there can be no thumb rule that in a prosecution before the Court of Special Judge, previous sanction under Section 19 of the Prevention of Corruption Act would invariably be the only prerequisite. Prosecution of offences under the general penal law against the public servant depends upon factual aspects. In the present facts of the case, there is no requirement of obtaining prior sanction of the Government for prosecuting the petitioner.

The petitioner has relied upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***A. Srinivasulu vs. The State represented by the Inspector of Police*** reported in ***AIR ONLINE 2023 SC 601***. In the said decision the Hon'ble Supreme Court clearly held that no public servant is appointed with a mandate or authority to commit offence.

The illegal act for which the petitioner has been apprehended does not relate to his official duty. The petitioner cannot claim that his service condition required siphoning of funds from wages of civic volunteers, hence, the act of the petitioner cannot be held to be an official act. To commit an offence punishable under law can never be a part of the official duty of a public servant.

It is settled law that the power to quash FIR at the very threshold invoking Section 482 Cr.P.C. is required to be exercised very sparingly and

only to prevent abuse of the process of law. The same is to ensure that the criminal proceeding is not used as a weapon of harassment. Here the initial enquiry report discloses at least some material against the petitioner on which the case can be put to trial.

From the discussions made herein above, it can be safely concluded that the petitioner, even though a public servant, will not be covered by the protective umbrella provided under Section 197 (1) Cr.P.C. and no sanction will be required for prosecuting him.

In view of the above, the revision application fails and is hereby dismissed.

There will, however, be no order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)