



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1125/2022

Shriniwas Reddy Kankanala
s/o Mohan Reddy Kankanala,
aged about 52 yrs., Occ. Service,
R/o. House No. 1-128, Hadapikonda
Kazipet Dist. Warangal, State – Telangana.

...APPELLANT

VERSUS

1. State of Maharashtra,
through its Police Station Officer,
Police Station, Balharshah,
Tah. & Dist. Chandrapur.
2. Smt. Vimalbai Ganpat Madavi,
R/o. Gandhinagar, Ward No.1 Virul,
Tah. Rajura & Dist. Chandrapur

....NON-APPLICANTS.

Mr. S.V. Sirpurkar, Advocate for applicant.
Mr. S.A. Ashirgade, APP for non-applicant No.1.
Mr. T.A. Mirza, Advocate for non-applicant No.2.

CORAM : VINAY JOSHI AND
MRS.VRUSHALI V. JOSHI JJ..

JUDGMENT RESERVED ON : 29.04.2024
JUDGMENT PRONOUNCED ON : 25.06.2024

JUDGMENT : (VINAY JOSHI, J.)

Heard.

2. By this application, the applicant – accused Srinivas Reddy Kankanala is seeking to quash and set aside charge-sheet No. 202/2021 arising out of Crime No. 794/2021 registered with the Police Station Balharshah, District Chandrapur for the offence punishable under Sections 302, 342 read with Section 34 of the Indian Penal Code.

3. The applicant was initially appointed as constable in the Railway Department. During passage of time, he was promoted to the post of Assistant Sub-Inspector and transferred to the Special Intelligence Branch ('SIB') Crime Intelligence Branch ('CIB') detective wing. At relevant time, he was posted at Sirpur kagaznagar Police Station (Telangana) as Police Sub-Inspector, Railway Protection Force ('RPF').

4. One suspect namely Anil Madavi died at Ballarsha, RPF out post while in custody of Railway Police. A crime has been registered against several Police Personnel including applicant alleging that they have mercilessly beaten deceased and thereby caused his death

amounting to the offence of murder. The investigation was entrusted with CID, Nagpur who in turn on completion of investigation, filed charge-sheet in the matter.

5. At the instance of report (dated 15.07.2021) lodged by mother of deceased, crime has been registered. It is informant's contention that few days preceding to 09.07.2021, she had been to her daughter's house. On her return to Rajura on 09.07.2021, she learnt that her son Anil (deceased) was missing from last two days. On 12.07.2021 informant's daughter Aruna, telephonically informed that Anil was taken into custody by Kagajnagar Railway Police Station. On the following day, she was updated that on 12.07.2021 around 10.00 p.m. her son died while in Police Custody at Ballarsha Railway outpost. The informant rushed to the Government Hospital, Chandrapur and noted that there were multiple injuries at the person of deceased. She suspected about custodial torture and accordingly lodged report.

6. The learned counsel appearing for applicant would contend that the First Information Report ('FIR') and the material collected during the course of investigation do not make out prima

facie case against the applicant. The charge-sheet is bereft of specific allegations against the applicant. The eye-witnesses have not stated the positive role of the applicant. It is submitted that the allegations of custodial torture are specifically against two Police Constable and thus, the material collected during the course of investigation even if accepted at its face value, does not disclose the commission of offence. Moreover, the learned counsel for applicant would submit that, in absence of requisite sanction under Section 197(1) of the Code of Criminal Procedure ('Code') the prosecution against the applicant is untenable.

7. The State as well as the learned counsel appearing for non-applicant put resistance to the application. It is submitted that admittedly, the applicant was investigating the theft case of Railway overhead wires. The record indicates that the applicant took deceased Anil into custody on 09.07.2021 and handed over the custody of deceased to Ballarsha Railway Police Station on 12.07.2021. During meantime deceased was under the supervision and in the custody of the applicant. There are statements of eye-witnesses showing positive involvement of the applicant. The postmortem report indicates that the cause of death was due to

injuries. Prima facie, there is sufficient material to put the applicant on trial and therefore, quashing is not permissible at the initial stage. Moreover, it is submitted that proposal for obtaining requisite sanction was forwarded which is awaited.

8. The Police of Railway Protection Force, Sikandarabad received a complaint about theft involving overhead electric wire. The applicant and head constable were instructed to take action against theft of copper wire. As per direction, time to time different suspects have been taken into custody. Deceased was taken to RPF, Shirpur Kagaznagar Police Station (Telangana) for inquiry. Thereafter, deceased was brought at RPF Out-post, Balharsha which comes under the jurisdiction of RPF Station Kagaj Nagar. At said place, he died as a result of severe injuries. It is prosecution case that the applicant was In-charge of investigation and for two days the deceased was in his custody. Though deceased was handed over to Ballarsha Railway Police on 12.07.2021, however due to injuries, he succumbed on the very day.

9. We have been taken through various statements and panchanama effected during the course of the investigation.

Particularly we have gone through the statement of eye-witnesses Buddhusingh Bhagat, Amar Sutar and Raju Gawande who were co-accused. Close examination of the statement of Buddhusingh discloses that on 09.07.2021 in the evening he was taken into custody by Police as a suspect. On 10.07.2021, in the wee hours, he noticed that deceased Anil was also brought by the Police and kept under the handcuffs. Police Constable Shukla, Mansingh and two other Police personnel have beaten him. Buddhusingh stated in detail as to how on the following day some other suspect were brought and Police beat all of them including deceased. He has specifically stated about the beating at the hands of Police personnel. On 12.07.2021, deceased was taken to Balharsha Railway Police Station, where also he was subjected to harassment.

10. The statement of Raju Gawande equally speaks about the physical torture of deceased. These witnesses have stated name of two constables and further stated that two other Police were involved in the act of brutal attack on deceased. The Police paper contains Test Identification Parade Report which prima facie shows that the applicant has been identified in prior Test Identification Parade. Of-course, it is the matter of trial to establish what was the

exact role of the applicant. Post-mortem report indicates that deceased sustained several injuries and cause of death is due to injuries.

11. The Post-mortem Report discloses that deceased sustained 13 injuries including contused abrasion, clusters of abrasion, incise wound, cut lacerated wound, lacerated wound on the various parts of the body. Moreover, there are internal injuries including multiple contusions on lung and other part. It is evident that the applicant was working in the team of CIB who brought deceased from his house at Virur Police Station on 09.07.2021. The relevant entry was taken and the deceased was taken to the RPF Police Station Kagaznagar for interrogation. It reveals that for two days continuously the deceased was under the investigation carried by the applicant with other Police. The statement of the eye-witness prima facie disclose the involvement of the applicant. The investigation paper contains panchanama singed by the applicant showing that the deceased was in his custody till 12.07.2021 when death occurred. During the course of investigating, the Police have seized CDR of the applicant as well as CCTV Footage was seized and sent for expert examination.

12. The Police have seized attendance record of CIB, Sikandarabad showing the applicant's involvement. Thus, there exist prima facie material about the involvement of accused. Even otherwise, it is not in dispute that the applicant was carrying said investigation and took deceased into custody on 09.07.2021. In the circumstances, it is not a case to say that there is no material against the applicant. The allegations are of serious nature which cannot be throttled at the initial stage. The investigation paper prima facie make out a case for trial and thus, the applicant's plea of total absence of material cannot be accepted.

13. It takes us to consider the crucial aspect of the case about requisite sanction to prosecute under Section 197 of the Code. The learned counsel appearing for applicant strenuously argued that though the applicant is public servant, the prosecution has not obtained prior sanction under Section 197 of the Code and thus, the entire prosecution is ex-facie bad for want of sanction. Per contra, the state has filed additional reply contending that the papers have been forwarded to the competent authority to obtain sanction, however due to language problem and other issues still the proposal

is pending. The State has also furnished chronological chart regarding the steps taken for obtaining sanction.

14. The learned counsel appearing for applicant strenuously argued that for want of sanction under Section 197(1) of the Code, the prosecution is untenable and liable to be quashed. It is his contention that the applicant while discharging his official duty, has arrested deceased and thus, the allegation revolves around the official act which requires statutory sanction. In other words, the allegation pertains to the act of accused closely relates to the discharge of the official duty, therefore, it is imperative to obtain sanction for protecting the Police Officers from unnecessary harassment. In order to emphasize the necessity of sanction, the applicant relied on the decision of the Supreme Court in case of *D. Devaraja Vs. Owais Beer Hussain, (2020) 7 SCC 695*, wherein the Court has succinctly explained the object behind obtaining sanction to prosecute the public servant, and the test to be applied for determining necessity of sanction.

15. On the other hand, reply affidavit of the State has not categorically denied necessity of sanction. It is stated (para 18) that

the Investigating officer has already forwarded the papers for obtaining necessary sanction which is still awaited. The State has also filed an additional affidavit stating the details about forwarding of proposal for sanction on 11.10.2021, compliances made time to time and pendency of proposal. However, the learned counsel appearing for non-applicant No.2 would contend that the applicant made an illegal arrest as well as assaulted the suspect and thus, the act does not fall in the official duty and therefore, sanction is not warranted.

16. Section 197 of the Code affords protection from false, vexatious or malafide prosecution to certain categories of the public servant by insisting on the requirement of previous sanction of the Government concerned. In case of **Pukraj Vs. State of Rajsthan (1973) 2 SCC 701**, the Supreme Court has made certain observations in para 2 which reads as below:-

“2 While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in

execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in the execution of duty. The test appears to be not that the offence is capable of being committed only, by public servant and not anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "Cloak of office" and "professed exercise of office" may not always be appropriate to describe or delimit the scope of the section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty."

17. Apparently, it is not every offence committed by the public servant that requires sanction for prosecution, but if the act complained of is directly concerned with his official duty, it can be said that to have been done by virtue of the office and then sanction would be necessary. If section 197 of the Code is construed too narrowly, it can never be applied for the reason, it is not part of officers duty to commit an offence and that never can be. The true test would be whether the act complained of was directly connected with his official duty or it was done in the discharge of his official duty or it was integrally connected with the official act. The only point for determination is whether the act was committed in the discharge of official duty and whether there is reasonable connection between the act and the discharge of duty.

18. Certainly, the question must be determined with reference to the nature of the allegations made against the public servant in criminal prosecution. The whole allegations are of the Police accesse in connection with the investigation of the crime. It is the prosecution case that the applicant has arrested accused as a suspected thief of cables and thus, he was taken into custody. It is alleged that during the course of interrogation, the applicant along

with co-accused have mercilessly beaten to the deceased resulting into death. The question next arises is whether the applicant at the relevant time was acting or purporting to act in discharge of his official duty. In case of **B. Shaha and others Vs. M/s. Kochar, (1979) 4 SCC 177**, a Three Judge Bench of the Apex Court has observed in para 18 as below:-

“18. The words "Any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in section 197(1) of the Code, are capable of a narrow as well as wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for it is no part of an official duty to commit an offence, and never can be. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision.”

19. The quality of the act is important and if it falls within the scope and range of official duty, the protection contemplated by Section 197 of the Code will be attracted. Therefore, the question whether an offence was committed in the course of official duty cannot be interpreted hypothetically and it depends on the facts of the case. Coming to the facts, undisputedly the applicant was concerned with the investigation of a crime. He took deceased into custody as a suspected thief. The applicant took him to the Police Station for interrogation and thus, it is purely a case of Police excess that the allegations about illegal which detention and harassment. The act was done by the applicant during the course of his duty though exceeded or attended colour of illegality which is inseparable. There is reasonable nexus between the act of the applicant with his duty in official capacity. Certainly, if the act of the applicant of commission of wrong, which constitutes the criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the competent authority. The act complained cannot be stated to be entirely outside the scope of the duty of the Police Officer which in that case may not require sanction. The act of the applicant as alleged is certainly in excess of duty, but there is

reasonable connection between the act and purpose of official duty and thus, the sanction is necessary for valid prosecution.

20. We may note that the State never resisted about the requirement of sanction to prosecute under Section 197 of the Code, but stated that already proposal for sanction has been forwarded which is pending with the Sanctioning Authority. Undisputedly, the applicant is a public servant and at the relevant time, was discharging his official duty. Admittedly, cognizance has been taken and charge-sheet has been filed without obtaining sanction, whilst according to the State the proposal is pending. In the circumstances, the prosecution without sanction is not approvable in the law. Though on facts, we hold that there is no prima facie material to quash the proceeding, however for want of sanction, the prosecution is not tenable.

21. In view of above, though case of quashing is not made out on merits, however taking of cognizance against the applicant/accused Shrinivas Reddy Kankanala a public servant without requisite sanction under Section 197(1) of the Code is illegal. Prosecution in absence of valid sanction against the

applicant is liable to be discontinued and we hold so accordingly. The prosecution is at liberty to resubmit the charge-sheet against the applicant, in case of grant of sanction.

22. While parting with the order, we may note that the sanction proposal was forwarded on 11.10.2021, but despite laps of near about three years, decision is awaited. We have experienced that in some cases proposals are being deliberately delayed. In the facts and circumstances of the present case, we are constrained to direct the concerned Sanctioning Authority (The Deputy Inspector General & Chief Security Commissioner, Railway Protection Force, South Central Railway, Ground Floor Rail Nilayam, Secunderabad, 500025) to take appropriate decision in the matter within three months from the date of communication of this order, and report the compliance.

23. Registrar (Judicial) to communicate this order to the concerned Sanctioning Authority and the Investigating Officer for necessary compliance.

24. Application stands disposed of in above terms.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Gohane