

2024:PHHC:168140



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

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CRM M-56909 of 2023
Date of Decision: 02.12.2024

Bhupinder Singh Bedi ...Petitioner
Versus
Ashok Chaudhary and others ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Jagatvir Dhindsa, Advocate, for the petitioner.

Mr. Sourabh Goel, Advocate
for respondents No. 1, 2, 3, 4 and 7.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition against the impugned judgment dated 29.07.2023 (Annexure P-8) passed by the Court of Additional Sessions Judge, Ludhiana, whereby, the Revisional Court had set-aside the summoning order dated 17.02.2017 (Annexure P-3) passed by the Court of Judicial Magistrate 1st Class, Ludhiana.
2. Learned counsel for the petitioner contends that the petitioner is highly qualified person and had completed 21 courses. The petitioner was harassed by Mr. K.K. Sharma, his superior as the petitioner had highlighted the rampant corruption in the department and he was pressurized not to pursue his legal remedies. Ultimately,

the petitioner was constrained to hand over his papers for resignation on 21.09.2012. However, the resignation submitted by the petitioner was not accepted by Mr. K.K.Sharma and the department decided to frame the petitioner in completely false and vicious departmental proceedings. The petitioner had filed a complaint before the Court of Judicial Magistrate 1st Class, Ludhiana in the year 2013 against the officials, Customs Department, as they had trespassed the property of the petitioner in an attempt to purportedly deliver the memorandum dated 23.01.2013.

3. Learned counsel for the petitioner further contends that respondents No. 1 to 5, all forcibly entered the house of the petitioner, manhandled him and also threatened him. The respondents No. 1 to 5 and 8 trespassed the house of the petitioner and even refused to accept the stay order of CAT and also searched the house of the petitioner illegally. Learned counsel further contends that there is a version and cross version of the present incident and the department decided to get one FIR No. 113 dated 27.08.2013 under Sections 353, 186, 342, 506 and 34 of IPC registered against the petitioner in Police Station Model Town, Ludhiana. Learned counsel further contends that the respondents were rightly summoned by the trial Court but the revisional Court completely misappreciated the provisions contained in Section 197 Cr.P.C. Learned counsel further contends that the revisional Court wrongly held that the accused were discharged their official duties by trespassing into the house of the petitioner. In fact,

the CAT had already passed a stay order, restraining the respondents/department from acting in pursuance to the charge sheet. Still, the officials of the department alongwith local police trespassed in the house of the petitioner and committed the crime.

4. On the other hand, learned counsel appearing on behalf of the respondents has vehemently argued that the impugned judgment is passed by the Revisional Court was well reasoned and the official of the department were performing their duties as per law. The protection given under Section 197 Cr.P.C. is to protect the responsible public servant against the institution of possible vicious criminal proceedings for the offence alleged to have been committed by them while they are acting or purporting to act as public servant. Even the policy of the legislature was to afford adequate protection to such public servant to ensure that they are prosecuted for anything done by them in the discharge of their official duties without reasonable cause.

5. I have heard the rival submissions made by learned counsel for the parties and perused the record.

6. Section 197 of the Code of Criminal Procedure is reproduced below for the facility of reference:-

“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) 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".

7. The Hon'ble Supreme Court has discussed the law relating to the applicability of the provisions of Section 197 Cr.P.C. in the matter of **D. Devaraja Vs. Owais Sabeer Hussain, 2020 AIR (Supreme Court) 3292** and held as follows:-

"31. To effectively adjudicate the issues raised in this appeal, it is necessary to examine the scope and effect of section 197 of the Criminal Procedure Code, 1973 and/or Section 170 of the Karnataka Police Act, 1963. It is necessary to examine whether want of sanction would vitiate criminal proceedings against a police officer, in all cases? If not, what are the circumstances in which sanction is necessary.

*32. The object of sanction for prosecution, whether under section 197 of the Code of Criminal Procedure, 1973 or under Section 170 of the Karnataka Police Act, is to protect a public servant/police officer discharging official duties and functions from harassment by initiation of frivolous retaliatory criminal proceedings. As held by a Constitution Bench of this Court in **Matajog Dobey v. H.C. Bhari AIR 1956 Supreme Court 44** held:*

"...Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard..... There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction..."

33. In ***Pukhraj v. State of Rajasthan and Another*** (1973) 2 SCC 701 this Court held:

"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 execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of 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 the office' may not always be appropriate to describe or delimit the scope of 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..."

34. In **Amrik Singh v. State of Pepsu AIR 1955 Supreme Court 309** this Court referred to the judgments of the Federal Court in **Dr. Hori Ram Singh v. Emperor AIR 1939 Federal Court 43**; **H.H.B. Gill v. Emperor AIR 1947 Federal Court 9** and the judgment of the Privy Council in **H.H.B. Gill v. R AIR 1948 Privy Council 128** and held:

"...The result of the authorities may thus be summed up: It is not every offence committed by a public servant that requires sanction for prosecution under section 197(1) of the Code of Criminal Procedure, 1973; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution..."

35. Section 197 of the Code of Criminal Procedure, 1973 1898, hereinafter referred to as the old Criminal Procedure Code, which fell for consideration in *Matajog Dobey (supra)*, *Pukhraj (supra)* and *Amrik Singh (supra)*

is in pari materia with section 197 of the Code of Criminal Procedure, 1973. The Code of Criminal Procedure, 1973 has repealed and replaced the old Code of Criminal Procedure.

36. In State of Orissa Vs. Ganesh Chandra Jew (Supra), this Court held:

"7. 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 of 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."

(emphasis supplied)

*37. In **State of Orissa v. Ganesh Chandra Jew (supra)** this Court interpreted the use of the expression "official duty" to imply that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. section 197 of the Code of Criminal Procedure, 1973 does not extend its protective cover to every act or omission done by a public servant while in service. The scope of operation of the Section is restricted to only those acts or omissions which are done by a public servant in discharge of official duty.*

*38. In **Shreekantiah Ramayya Munipalli v. State of Bombay AIR 1955 Supreme Court 287**, this Court explained the scope and object of Section 197 of the old Criminal Procedure Code, which as stated hereinabove, is in pari materia with section 197 of the Code of Criminal Procedure, 1973. This Court held:*

"18. Now it is obvious that if section 197 of the Code of Criminal Procedure, 1973 is construed too narrowly it

can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning. What it says is-

'When any public servant .. 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..'

We have therefore first to concentrate on the word 'offence'.

19. Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the present case, the elements alleged against the second accused are, first, that there was an 'entrustment' and/or 'dominion'; second, that the entrustment and/or dominion was 'in his capacity as a public servant'; third, that there was a 'disposal'; and fourth, that the disposal was 'dishonest'. Now it is evident that the entrustment and/or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity. Therefore, the act complained of, namely, the disposal, could not have been done in any other way. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because the second accused could not dispose of the goods save by

the doing of an official act, namely, officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it."

39. The scope of Section 197 of the old Code of Criminal Procedure, was also considered In **P. Arulswami v. State of Madras AIR 1967 Supreme Court 776** where this Court held:

"...It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by section 197 of the Criminal Procedure Code, 1973 will be attracted." If the act is totally unconnected with the official duty, there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable..."

40. In **B. Saha and Others v. M.S. Kochar (1979) 4 SCC 177** this Court held:

"18. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been

committed by the public servant either in his official capacity or under colour of the office held by him."

41. In **Virupaxappa Veerappa Kadampur v. State of Mysore (supra)** cited by Mr. Poovayya, a three Judge Bench of this Court had, in the context of Section 161 of the Bombay Police Act, 1951, which is similar to Section 170 of the Karnataka Police Act, interpreted the phrase "under colour of duty " to mean "acts done under the cloak of duty, even though not by virtue of the duty".

42. In *Virupaxappa Veerappa Kadampur (supra)* this Court referred to the meaning of the words "colour of office" in Wharton's Law Lexicon, 14th Ed. Which is as follows:

"Colour of office"

"When an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour."

43. This Court also referred to the meaning of "colour of office in Stroud's Judicial Dictionary, 3rd Edition, set out hereinbelow: Colour: "Colour of office" is always taken in the worst part, and signifies an act evil done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office is but a veil to the falsehood, and the thing is grounded upon Vice, and the Office is as a shadow to it. But `by reason of the office' and `by virtue of the office are taken always in the best part."

44. After referring to the Law Lexicons referred to above, this Court held: "It appears to us that the words under colour of duty have been used in s.161(1) to include acts done under the cloak of duty, even though

not by virtue of the duty. When he (the police officer) prepares a false Panchnama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in Stroud's Dictionary as a veil to his falsehood. The acts thus done in dereliction of his duty must be held to have been done "under colour of the duty".

8. In the present case also, I agree with the findings recorded by the Revisional Court that the respondents No. 1 to 4 were acting as per the directions of the higher officers, i.e., respondents No. 6 and 7 and had gone to the house of the petitioner to serve a charge sheet, which he was not accepting by way of regular mode/speed post. Even, the complainant received the said memorandum in a peaceful manner and under protest in the presence of his Advocate Shri R.K. Morya and Shri Sanjay Behl, Journalist. Thus, when all the respondents were performing their official duties, it was mandatory to get the sanction under Section 197 Cr.P.C. In the present case, this Court has no doubt that the respondents were performing their official duties and even if they had acted in excess of their duties, but there was requisite connection between the act and the performance of official duties, the excess will not be sufficient ground to deprive the public servant of the protection. However, in the present case, the entire consequence of events having happened in a peaceful manner though under protest, thus, the protection under Section 197 Cr.P.C. would be available to the respondents.

9. Thus, finding no merits in the instant petition, the same is ordered to be dismissed.

02.12.2024

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No