

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2665-2023 (O&M)
Date of Decision: 25.04.2024

DARSHAN SINGH

... Petitioner

Versus

STATE OF PUNJAB & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Dr. Rau P.S. Girwar, Advocate with
Ms. Archana Arora, Advocate
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

The present revision petition has been preferred against the order dated 12.10.2023 passed by the Sessions Judge, Faridkot whereby charges have been framed against the petitioner.

2. The brief facts of the case are that an FIR No.71 dated 30.04.2021 U/s 379B, 355, 323, 166, 506 IPC, P.S. Sadar Faridkot, Faridkot came to be registered at the instance of Jagpreet Singh, Hindi Master Govt. Middle School Mahumuana, Faridkot against Darshan Singh (petitioner) Principal, Shahid Sapahi Bhai Kulwinder Singh Senior Secondary School, Village Machaaki Kalan, Faridkot with the allegations that the petitioner/accused had pulled the beard of the complainant had taken off his turban, gave him beatings and also snatched his mobile phone. The copy of the FIR No.71 dated 30.04.2021 is attached as Annexure P-1 to the petition.

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3. During the course of investigation, the supplementary statement of the complainant, various eye-witnesses and other witnesses were recorded in support of the case of the prosecution. The said statements are attached collectively as Annexure P-24 to the petition.

4. On conclusion of the investigation, the report under Section 173(2) Cr.P.C. was submitted against the petitioner under Sections 379B, 355, 323, 166 and 506 IPC. The copy of the said report is attached as Annexure P-15.

5. Pursuant thereto, the charges came to be framed against the petitioner vide impugned order dated 12.10.2023 under Sections 379-B, 323, 355, 506 and 166 IPC.

6. It is this order which is under challenge in the present petition.

7. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. In fact, he was a disabled person and had only acted in self-defence when the complainant came into his office. The complainant had grudge against the petitioner since the year 2019 and had been indulging in insubordination. A bare reading of the FIR would show that none of the offences for which the petitioner has been charged are made out. Be that as it may, the primary argument of the petitioner is that charges could not have been framed in the absence of sanction under Section 197 Cr.P.C. as the petitioner was a public servant. He, therefore contends that the impugned order was liable to be set aside. Reliance is placed on the judgment in the case of **State of Orissa Versus Ganesh Chandra Jew, 2004 SCC (CrI) 2104.**

8. I have heard the learned counsel for the petitioner at length and examined the record.

9. Before proceeding further in the matter, it would be apposite to examine Section 197 of the Code of Criminal Procedure, 1973 and the same is reproduced hereinebelow:-

“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 officer 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.”

10. The Hon’ble Supreme Court in the case of **State of Orissa** (supra) as held as under:-

“10. Such being the nature of the provision the question is how should the expression, “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty”, be understood? What does it means? “Official”, according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official

capacity. In *B. Saha v. M.S. Kochar* it was held : (SCC pp. 184-85, para 17)

"17.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 a 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 two extremes. While on the one hand, 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 and the said provision."

(emphasis in original)

Use of the expression, "official duty" implies that the act or omission must have been done by public in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or omission done by a public servant in service but restrict its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

11. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must

have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification therefor then the bar under Section [197](#) of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in Matajog Dobey v. H.C. Bhari : (AIR p.49 paras 17 & 19).

"The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty...

There must be a reasonable connection between the act and the discharge of official duty; the act must bear such

relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

12. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to official to which applicability of Section 197 of the Code cannot be disputed."

(emphasis supplied)

11. Coming back to the facts of the instant case, a perusal of the FIR, the supplementary statement of the complainant as also the statements of teachers such as Amandeep Singh son of Jaswinder Singh, Amardeep Kaur D/o of Arminder Singh and Ansoosai wife of Manjinder Singh would prima facie establish the veracity of the prosecution case against the petitioner. Further, the statement of Lakhwinder Singh and Gurcharan Singh, Members of the Panchayat are also in support of the prosecution case. Therefore, the contentions raised by the petitioner with respect to his false implication, him acting in self-defence and the complainant indulging in insubordination cannot be accepted to be correct at this stage and would amount to adjudicating upon disputed questions of fact which cannot be done in summary proceedings. Even otherwise charges can be framed on the basis of suspicion alone and even if two views are possible a Trial Court would do well in framing charges and allow the case to proceed to Trial.

12. As regards the contention that no sanction was sought, it would be relevant to mention here that though the petitioner may have acted in the course of his service being the Principal of a school but the allegations

against him could not be said to be committed in the discharge of his official duty because committing the offences for which the petitioner has been charged can never be in the discharge of official duties. Even if the report under Section 173(2) Cr.P.C. refers to the fact that sanction was awaited, the said fact would have no significance at all because the requirement or the lack thereof of sanction under Section 197 Cr.P.C. is to be examined on the basis of the facts and circumstances and the evidence on record. In the instant case, no doubt the petitioner was the Principal of a school but by no stretch of imagination can it be said that while assaulting the complainant, he acted in the discharge of his official duty requiring obtaining of sanction under Section 197 Cr.P.C.

13. In view of the above discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

14. However, the observations made hereinabove are only for the purposes of deciding this revision petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence led before it uninfluenced by any such observations made herein.

(JASJIT SINGH BEDI)
JUDGE

25.04.2024

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No