



\$~123

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 4104/2022 & CRL.M.A. 16943/2022**

DILIP KUMAR BID AND ANR.

.....Petitioners

Through: Mr. Amandeep Singh, Mr. Jaspreet Singh and Ms. Nandini, Advocates.

versus

STATE NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.
SI Rajiv Ranjan, PS Mayapuri.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

11.09.2024

%

1. The Petitioner has approached this Court for quashing FIR No.552/2015 dated 17.10.2015, registered at Police Station Mayapuri for offences punishable under Sections 223/224 IPC.

2. The facts of the case reveal that the present FIR was got registered on the complaint given by a Sub-Inspector Dilip Kumar Bid/Complainant who was from PS Taltala, Kolkata, West Bengal. The gist of the complaint is that the Complainant along with Const. No-10503 Prashanta Kumar Saha, L/Const. No-470, Mamomi Pramaniek and L/Const. No-516 Pinki Sarkar came to New Delhi from Kolkata on 15.10.2015 for investigation regarding a case being CI No.176 dated 04.10.2015 registered under Sections 363/365 IPC. It is stated that the accused Gopal Sharma @ Gopal Kumar S/O Birju Sharma was arrested from Gupri No-305, Phase-II, Mayapuri, PS Mayapuri, New Delhi-64 for his direct complicity in the case. The accused was kept in



the Police lockup for safe custody and was produced before the Ld. ACMM (West), Room No-145, Tis Hazari Court, New Delhi, where the Ld. Court of ACMM had granted 04 days transit bail till 20.10.2015 for the arrested accused person for producing him before the Ld. ACMM-02, Kolkata. It is stated that the Constable No-10503 Prashanta Kumar Saha went to Deendayal Upadhyay Hospital, Hari Nagar, New Delhi-64 by auto rickshaw where the accused person was medically examined and while returning when they entered the compound of PS Mayapuri, the arrested accused person applied force on Constable Prashanta Kumar Saha and fled away from his custody. On the said statement, the present FIR was registered against the Complainant and the Constable Prashanta Kumar Saha who was accompanying him.

3. The cognizance of the offence was taken by the Trial Court *vide* Order dated on 09.02.2016.

4. Learned Counsel appearing for the Petitioner states that since no sanction has been taken, the entire FIR should be quashed.

5. Section 197 Cr.P.C mandates that no Court shall take cognizance of any offence without a previous sanction if the offence is committed by a Public Servant purporting to act in the discharge of his official duty. The Apex Court in State of Maharashtra v. Budhikota Subbarao (Dr), (1993) 3 SCC 339 has observed as under:

“5. Prior to examining if the courts below committed any error of law in discharging the accused it may not be out of place to examine the nature of power exercised by the court under Section 197 of the Code and the extent of protection it affords to public servant, who apart, from various hazards in discharge of their duties, in absence of a provision like the one may be exposed to vexatious



prosecutions. Section 197(1) and (2) of the Code reads as under:

“197. (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.*

(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.”

The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance no prosecution can be initiated in a Court of Sessions under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a



Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his knowledge that such offence has been committed. So far public servants are concerned the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete.

Very cognizance is barred. That is the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty."

(emphasis supplied)

6. Section 197 Cr.P.C only prohibits from taking cognizance of the offence but it does not state that the FIR should be quashed. However, since no sanction has been received, the Trial Court could not have taken the



cognizance of the offence without a sanction.

7. Resultantly, only the Order dated 09.02.2016 passed by the Trial Court taking cognizance of the offence is quashed.

8. With these observations, the petition is disposed of, along with pending application(s), if any.

9. It always open for the Petitioners to file an appropriate petition by stating that present case has become a stale case and that the Police has not acted properly by delaying in obtaining sanction.

SUBRAMONIUM PRASAD, J

SEPTEMBER 11, 2024

S. Zakir