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Cri. WP-845-2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 845 OF 2024

Shivaji Kisanrao Pohar
Police Sub-Inspector,
Chandanzira Police Station,
Age: 57 years, Occu: Service,
R/o. Police station, Chandanzira,
Jalna, Tal. & Dist. Jalna.

...PETITIONER

VERSUS

1. The State of Maharashtra
Through its Police Station,
Chandanzira, Jalna,
Tal. & Dist. Jalna.
2. The Superintendent of Police,
Jalna, Tal. & Dist. Jalna.
3. Lakhan Kacharu Ghorpade,
Age: 26 Years, Occu: Labour,
R/o. Khadgaon, Tq. Badnapur,
Dist. Jalna.

...RESPONDENTS

Mr. Aditya N. Sikchi, Advocate for Petitioner.
Mr. R. B. Dhaware, APP for Respondent Nos. 1 to 2-State.
None for Respondent No.3.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 31st JULY 2025.
PRONOUNCED ON : 8th SEPTEMBER 2025

ORDER :-

1. Heard Mr. Sikchi, learned Advocate for the petitioner, and Mr. Dhaware, the learned APP for Respondent-State. This petition is heard for final disposal at the stage of admission, with the consent of the parties.
2. The petitioner is Police Sub-Inspector, attached to Chandanzira Police Station, Jalna, he challenges the order dated 28th August 2023, passed by the learned Judicial Magistrate First Class, Court No.2 Jalna, in Crime No.16/2023, directing to issue notice and directing the Assistant Superintendent of Police to lodge a case against the petitioner for offences punishable under Sections 325 & 326 of the Indian Penal Code, 1860.
3. Respondent No.1 is the State and Respondent No.2 is the Superintendent of Police, Jalna. Respondent No.3 is the accused in other case, on the basis of whose oral complaint in the court, impugned order

is passed by the Magistrate. Respondent No.3, though is served and had earlier appeared through a lawyer, none is appearing since long.

4. The facts, in short, giving rise to the present petition are that the petitioner, while working as a Police Sub-Inspector, Chandanzira Police Station, Jalna, he received secret information on 10th August 2023 that the respondent is standing at one spot. He was wanted in some other offences pending against him. The petitioner and his staff went to the said spot and asked respondent to surrender. However, Respondent No.3, alongwith other persons present with him, assaulted the petitioner and his colleague. The petitioner also got injured in the said assault. Respondent No.3 then ran away. The police party chased him and ultimately arrested him. However, while chasing, the respondent No.3 fell down in a pit and received injuries. While he was taken in the vehicle, he assaulted one police constable Deshmukh. Even in the police custody, he continued to abuse the petitioner and his colleagues. Some other supporters of respondent No.3 came to the police station and

created ruckus. The respondent No.3 was arrested and FIR came to be registered against him bearing FIR No.302/2023. Since he received injury by falling in a pit, he was sent for Medical Examination. Looking at his condition, he was admitted to the civil hospital, Jalna on 10th August 2023. On 12th August 2023, he was referred to the Government Hospital, Aurangabad, and on 28th August 2023, he was discharged and was produced before the learned JMFC, Jalna Court No.3, for recording his complaint.

5. When respondent No.3 produced before the learned JMFC, he made oral complaint that he was manhandled by police and was mercilessly beaten. On this, the learned JFMC passed the impugned order directing to take action against the petitioner by lodging a complaint. The petitioner is thus before this Court, challenging the said order.

6. The main contentions of the petitioner in the present case are that he was discharging his official duties. Since allegation is about the act

committed by this petitioner while discharging his duty, it was necessary for the learned JMFC to take cognizance only after obtaining sanction. Without following the process of obtaining sanction, the learned JMFC has directed to register a complaint. The learned Magistrate though got it written from respondent No.3 that he was manhandled, it was necessary to ascertain the said fact.

7. In support of his submissions, the learned Advocate for the petitioner relied upon the following judgments:

- (i) *State of UP Vs. Paras Nath Singh;*
- (ii) *Anil Kumar and Ors. Vs. M. K. Aiyappa and Ors.;*
- (iii) *D. Devaraja Vs. Owais Sabeer Hussain;*
- (iv) *UPS Madan Vs. State of Maharashtra and Ors.*

8. The learned APP filed an affidavit and has also produced on record documents about the case filed against respondent No.3. It shows that the respondent No.3 is history-sheeter, and there are seven offences pending against him. The details and status of the offences registered

against the present petitioners are as below:

- (i) C.R. No. 110/2017, U/s. 324, 504 r/w 34 of IPC.
- (ii) C. R. No. 240/2017, U/s. 324, 323, 504, 506 r/w 34 of IPC,
- (iii) 286/2017 U/s. 394, 506 r/w 34 of IPC
- (iv) C.R. No.06/2022, U/s. 452, 384, 323, 427, 504, 506 r/w 34 of IPC;
- (v) C.R. No.07/2022, U/s. 307, 326, 324, 333, 506, 504 r/w 34 of IPC;
- (vi) C.R. No. 16/2023 U/s. 326, 504, 506 r/w 34 of IPC and
- (vii) C.R. No.302/2023 U/s. 353, 332, 333, 427, 504, 506 r/w 34 of IPC.

. All the offences are pending trial. He was not found by the police and therefore police was in his search. It is in this context that the incident has taken place where the respondent No.3 received injuries. The learned APP thus prays for passing an appropriate order.

9. It is a matter of record that respondent No.3 is facing various

criminal cases and is a history-sheeter. Admittedly, the learned Magistrate has taken cognizance of his complaint, when he was produced before the learned Magistrate. The complaint is made orally by respondent No.3, and it is upon that the order is passed. Thus, there is no doubt that the petitioner was discharging his duty, when the respondent No.3 was arrested. The complaint was made when he was produced before the Court in connection with other offences.

10. In the case of ***State of U. P*** (supra), the Hon'ble Apex Court considered provisions of Section 197(1)(2) of the Code. It is held that no prosecution can be initiated in a Court of Sessions Judge under Section 193, as it cannot take cognizance. It is only for the Magistrate to take cognizance of any offence as provided by section 190 of 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. As regards public servants are concerned, it is held that the cognizance of any offence without prior sanction by any Court, is barred under Section 197 of the

Code. It is held that Section 197 gives protection to the public servants.

11. In the case of *Anil Kumar* (supra), the Hon'ble Apex Court considered the provisions of Sections 156(3), 200 and 197 of the Code of Criminal Procedure. It is held that when sanction is required, the Court cannot take cognizance of the offence without sanction. It was a case under Prevention of Corruption Act and the Hon'ble Court considered Section 19 of the said Act.

12. In the case of *D. Devaraja* (supra), the judgment is on the powers of the Court to quash the complaint and the proceedings. It is now well-settled that when the allegations are made against public servants for any offence committed while discharging their official duties, it is necessary to obtain a sanction, unless there is a sanction, no Court can take cognizance. In the present case, the order itself shows that the Court has already taken cognizance by impugned order and directed to register the complaint. The order is not against the petitioner but against all other responsible persons who were present when the accused was

brought to the police station. It is seen that the order is thus without any application of mind. It is not even confirmed as to which police official was present. The submission of the learned Advocate for the petitioner is that directing to register a complaint would amount to taking cognizance without sanction. No cognizance could have been taken.

13. This Court finds substance in the submission of learned Advocate for the petitioner that no cognizance could have been taken without sanction in the present case. This Court finds substance in the writ petition. The writ petition is therefore deserves to be allowed. Hence, the following order:

ORDER

Writ Petition stands allowed in terms of prayer clause (D).

[KISHORE C. SANT, J.]