



Judgment

435 revn107.24

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

CRIMINAL REVISION APPLICATION NO.107 OF 2024

1. Shashikant s/o Jarichand Londhe,
age 38 years, occupation: service
r/o B-2, Sundernagar Apartment, Near
new RTO, Vijaypur Road, Solapur.

2. Karuna Kailas Chugule,
age 33 years, occupation: service,
r/o B-2, Sundernagar Apartment, Near
new RTO, Vijaypur Road, Solapur. **Applicants.**

:: VERSUS ::

1. State of Maharashtra,
through Police Station Officer,
Police Station Pendhari,
district Gadchiroli.

2. Rohini Milind Madavi,
age 26 years, occupation labour,
r/o Karwafa, Tahsil Dhanora,
district Gadchiroli. **Non-applicants.**

Shri R.R.Vyas, Counsel for Applicants.

**Shri C.A.Lokhande, Additional Public Prosecutor for the
State.**

Mrs.Punam Pisurde, Counsel Appointed for NA No.2.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 02/07/2025

PRONOUNCED ON : 21/07/2025

JUDGMENT

1. By this revision, the applicants have challenged order dated 3.6.2024 passed by learned Additional Sessions Judge, Gadchiroli (learned Judge below) in B-Summary Case No.8/2023 by which process was issued against applicants for offences punishable under Sections 294, 323, and 354(A)(iv) and 506 read with 34 of the IPC and 3(1)(4), 3(1)(s), (1)(w), (2)3, and (2)(va) of the The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Non-applicant No.2 (the informant) approached the police station for lodging FIR on 20.3.2018 as there was quarrel between her in-laws and relative Balaji and the said relative had caught hold of her husband Milind

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and, therefore, at about 9:00 am, she along with her husband went to the police station to lodge the report. At the relevant time, applicant No.1 was present who convinced and suggested the informant not to lodge the FIR and maintain peace. The informant and her husband met the applicants and applicant No.1 allegedly used abusive words against them and humiliated and insulted them and had also beaten the husband of the informant by means of belt. It is further alleged that he slapped the informant twice and used abusive words on her caste. Thereafter, she was pushed out of the police station, but due to fear, the informant and her husband returned back to their house. Thereafter, applicant No.2 came there and threatened both ladies present along with the informant and, thereafter, applicant No.2 insulted and abused the informant and also assaulted her physically. They went for medical examination to the Primary Health Centre,

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Karwafa, but as the said Primary Health Centre was closed, they approached the Government Hospital at Gadchiroli whereat they were admitted for treatment. On the basis of the said report, the police registered the crime.

3. During investigation, statements of various witnesses were recorded and as the investigating officer could not found any substance in the allegations, he submitted B-Summary Report and the same came to be rejected by learned Judge below.

Hence, this revision.

4. Heard learned counsel Shri R.R.Vyas for the applicants, learned Additional Public Prosecutor Shri C.A.Lokhande for the State, and learned counsel Mrs. Punam Pisurde appointed for the informant.

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5. Learned counsel for the applicants submitted that the entire investigation carried out by the investigation officer reveals that in the alleged incident the informant and her husband were assaulted and humiliated at public place. He submitted that it is imperative on the part of learned Judge below to assign reasons while rejecting the B-Summary Report. He invited my attention to the order impugned in the revision and submitted that the said order nowhere reveals any reasoning while rejecting the B-Summary Report. No separate reasons are assigned and also learned Judge below has not taken into consideration that the entire statements of the witnesses nowhere support the case of the informant as far as the provisions of the Atrocity Act are concerned.

He further raised the issue that an appropriate sanction was not obtained in view of Section 197 of the

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CrPC as the alleged act was committed by the applicants while discharging their official duty and, therefore, he prays that the revision be allowed.

6. In support of his contentions, learned counsel for the applicants placed reliance on following decisions:

1. Ravindra vs. State of Maharashtra, through PSO and ors, reported in 2025 SCC OnLine Bom 1051;

2. Dattaprabhu vs. State of Maharashtra, through PSO, Wadgaon Road, Yavatmal and anr, reported in 2012 SCC OnLine Bom 1221, and

3. Criminal Appeal No.1759/2025 (G.C.Manjunath and ors vs. Seetaram) decided by the Hon'ble Apex Court on 3.4.2025.

7. *Per contra*, learned Additional Public Prosecutor for the State supported the B-Summary Report and submitted that during the investigation, no substance is found and, therefore, the B-Summary is filed.

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8. Learned counsel appointed for the informant submitted that learned Judge below has considered that the act of present applicants of assaulting and humiliating the informant and her husband is supported by the material, which is *prima facie* sufficient to reject B-Summary Report.

9. In support of her contentions, learned counsel for the informant placed reliance on following decision:

1. PK.Pradhan vs. State of Sikkim, rep. by the CBI, reported in (2001)6 SCC 704;

2. Raj Kishor Roy vs. Kamleshwar Pandey and anr, reported in 2002 CRI LJ 3780, and

3. Animesh Kumar and ors vs. State of UP and anr, reported in 2025 AHC:46577.

10. In view of the above submissions, it is necessary to go through the relevant provisions of the CrPC.

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11. The provisions of Section 156(1) and (2) of the Code describes that statutory powers are given to officer incharge of the police station to investigate cognizable offence case. The similar powers are also assigned to the authorized officer under the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and for the said purpose, the SDO is appointed as an authorized officer for investigation.

12. Sections 169, 170, and 173 of the Code require to be read together.

Section 169 read with Section 170 of the Code shows that if upon an investigation under the provisions of Chapter XII of the Code reveals to the officer incharge of police station that there is no sufficient evidence or reasonable grounds to suspicion to justify the prosecution against the accused, he can release such persons after

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taking bond requiring his appearance before the Magistrate, if in future the same becomes necessary.

The report in Section 173(2) of the Code is required to be submitted after completion of investigation and even when the officer is of the opinion that no sufficient material is against the accused.

In view of Section 173(2)(d), specific opinion formed by the police officer is required to be mentioned in the report.

Section 173(4) shows that the Magistrate can reject the report.

13. Thus, the law is that the Magistrate is not bound to accept such report.

14. Reading of Section 170 with 173 of the Code reveals that if the investigating officer forms an opinion

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that there is sufficient evidence or reasonable grounds of suspicion to justify the forwarding of the accused to the Magistrate, such Officer shall forward the accused under custody to the Magistrate empowered to take cognizance on Police report and to try the accused or to commit him for trial.

Section 173 (2)(d) of the Code shows that it needs to be specifically mentioned in the report filed under the Section by the Investigating Officer that the offence has been committed and if it has been committed, the name of the accused, who is being forwarded to the Magistrate for commission of the offence.

Section 173(2)(g) of the Code shows that it needs to be informed to the Magistrate that the accused has been forwarded to the Magistrate after forming opinion as required under Section 170 of the Code. The definition

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of police report is given in Section 2(r) of the Code which shows that i) when the opinion is formed that it is not a fit case for forwarding the accused under Section 170 and case falls under Section 169 of the Code or ii) when the opinion is formed that it is a fit case to forward the accused under Section 170 of the Code, the report is required to be prepared as per the provisions of Section 173 of the Code.

The provisions of Sections 173 and 190(1)(b) of the Code together show that when such report is submitted, there is discretionary power to the Magistrate either to take cognizance of the offence or to refuse to take cognizance.

15. Thus, the above provisions show that the discretion is vested in the Magistrate, but such discretion needs to be used judiciously. In a case, where a

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Magistrate decides not to take cognizance of an offence and drops proceedings, and there are insufficient grounds against some persons mentioned in the FIR, the Magistrate must give notice to the informant and give him an opportunity to hear at the time of consideration of the report. However, either from the provisions of the Code or from the principles of natural justice, no obligation on the Magistrate to issue notice to the injured person or to relative of the deceased for providing such persons an opportunity to hear at the time of consideration of the report can be spelled out, unless such persons are the informants who lodged the FIR. But, even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. But, if the Magistrate decides

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that there is no sufficient ground to proceed further and drop the proceedings or take the view that though there is sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose; wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2) (ii) of Section 173, the officer of the police station under Section 157(2) to notify to the informant the fact that he is not going to investigate the case and under Section 73(2) the said officer is under obligation to communicate the action taken by him and report forwarded by him to the Magistrate. It must

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be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process. There is no doubt that on a consideration of the report made by the officer in-charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process.

16. It is well settled that if the court is of the opinion that the 'B' Summary Report submitted by the police has to be rejected, by expressing its judicious opinion, after applying its mind to the contents of 'B' report, the court has to reject the B-Summary Report..

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17. It is well settled that if the court is of the opinion that the B-Summary Report submitted by the police has to be rejected, by expressing its judicious opinion, after applying its mind to the contents of 'B' report, the court has to reject the 'B' Summary Report.

18. The application of judicious mind is distributable only in the order reasons are live-links between mind of the decision taken to the controversy in question and the decision arrived at. Reason and application of mind are essential for judicial order to sustain scrutiny of law. Admittedly, Reasons in every circumstances need not be elaborate, but nevertheless should bear application of mind.

19. The Hon'ble Apex Court, in the case of **Vishnu Kumar Tiwari vs. The State of Uttar Pradesh**, reported in **AIR 2019 SC 3482**, referring its earlier decision, held that

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it is undoubtedly true that before a Magistrate proceeds to accept a final report under Section 173 and exonerate the accused, it is incumbent upon the Magistrate to apply his mind to the contents of the protest petition and arrive at a conclusion thereafter. While the Investigating Officer may rest content by producing the final report, which, according to him, is the culmination of his efforts, the duty of the Magistrate is not one limited to readily accepting the final report. It is incumbent upon him to go through the materials, and after hearing the complainant and considering the contents of the protest petition, finally decide the future course of action to be, whether to continue with the matter or to bring the curtains down.

20. The Hon'ble Apex Court, in the case of **Ramswaroop Soni vs. The State of Madhya Pradesh and**

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anr, reported in AIR 2019 SC 3801, also held that the law is well-settled that in case a final report is filed under Section 173(2) of the Code stating that no offence is made out against the accused, any of the following courses can be adopted by the Magistrate: (a) he may accept the report which was filed by the police in which case the proceedings would stand closed; (b) He may not accept the report and may take cognizance in the matter on the basis of such final report which was presented by the police; and (c) if he is not satisfied by the investigation so undertaken by the police, he may direct further investigation in the matter.

The law is further well-settled that the judicial discretion to be used by the Magistrate at such stage has to fall in either of the three aforesaid categories.

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21. The position is, therefore, now well settled that upon receipt of a police report under section 173(2) of the Code, a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order issuing of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigation officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his

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powers under Section 190(1)(b) and direct the issue of process to the accused. Where the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, and insufficient material in respect of the informant would certainly be prejudiced. Therefore, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory.

22. In the light of the above well settled legal provisions, the facts of the present case show that report is lodged on an allegation that there was dispute in the house of the informant and she was abused by her relatives and, therefore, she along with her husband approached the police station to lodge the report.

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Instead of taking report, they were abused and assaulted by the applicants.

23. The statement of husband of the informant is also on the similar line.

24. As per the statement of Geeta Ramteke, who is the wife of Balaji, on the day of the incident, there was a quarrel between her husband and husband of the informant and husband of the informant approached the police station to lodge the report. At about 9:00 am to 10:00 am, the applicants called the informant and her husband at the police station. The wife of applicant No.1 was also present in the police station as she is also serving in the police department. It is alleged that the wife of applicant No.1 assaulted the informant as well as her husband by belt and abused them on their caste.

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25. The discharge card of the informant shows that there were three injuries on her person in the nature of contusions. The husband of the informant has also sustained injuries which are multiple contusions and the age of the injury is within 3-4 hours.

26. The statement of Geetabai Korewar also shows that when she and another neighbour approached the police station, they were threatened by the police officials.

27. The subsequent statement of Geeta Ramteke shows that the informant and her husband were not assaulted in her presence.

28. Rest of the statements are of the police officers who have not supported the contentions as to abuses on caste.

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29. Thus, the statements of the informant, her husband, Geeta Ramteke, and photographs of the police station disclose the presence of applicants in the police station as well as presence of the informant and her husband. The documents on record sufficiently show that the informant belongs to the Scheduled Caste. As per the allegations levelled against them, they assaulted the informant and her husband by means of belt and by fist and kick blows. The injuries on the persons of the informant and her husband are sufficient to show that they were assaulted either by means of kick blows or by blunt object.

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31. The another ground raised in the application is that the alleged incident has taken place while discharging official duty.

32. The applicants are police officers and prior sanction under Section 197 of the CrPC was not obtained from the Government before prosecuting against the accused persons.

33. Learned counsel for the applicants placed reliance on the decision of the Hon'ble Apex Court in the case of **G.C.Manjunath and ors vs. Seetaram, reported in 2025 LiveLaw (SC) 399** wherein it is held that a careful reading of Section 197 of the CrPC unequivocally delineates a statutory bar on the Court's jurisdiction to take cognizance of offences alleged against public servants, save without the prior sanction of the appropriate government. The essential precondition for

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the applicability of this provision is that the alleged offence must have been committed by the public servant while acting in the discharge of, or purported discharge of, their official duties. The protective mantle of Section 197 of the CrPC, however, is not absolute; it does not extend to acts that are manifestly beyond the scope of official duty or wholly unconnected thereto. Acts bereft of any reasonable nexus to official functions fall outside the ambit of this safeguard and do not attract the bar imposed under Section 197 of the CrPC.

34. Section 197 of the CrPC requires prior sanction where a public official is accused of having committed “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty.” The underlying rationale of both these statutory provisions is to safeguard public functionaries

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from frivolous or vexatious prosecution for actions undertaken in good faith in the discharge of, or purported discharge of, their official duties, thereby ensuring that the fear of litigation does not impede the efficient functioning of public administration.

35. In the case of in **B.Saha vs. M.S.Kochar, reported in (1979)4 SCC 177** it has been observed that 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 of the CrPC are capable of a narrow as well as a wide interpretation. It is also observed that 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

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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 on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, that is entitled to the protection of Section 197 of the CrPC, an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision.

36. In the case of **Baijnath vs. State of Madhya Pradesh, reported in (AIR 1966 SC 220)**, the Hon'ble Apex Court observed that 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 under Section 197 of the CrPC will be attracted.

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37. The Hon'ble Apex Court, in the case of **Amod Kumar Kanth vs. Association of Victim of Uphaar Tragedy, (2023) 16 SCC 239**, held that the State performs its obligations through its officers/public servants and every function performed by a public servant is ultimately aimed at achieving public welfare. Often, their roles involve a degree of discretion. But the exercise of such discretion cannot be separated from the circumstances and timing in which it is exercised or, in cases of omission, when the omission occurs. In such circumstances, the courts must address, whether the officer was acting in the discharge of official duties. It was observed that even when an officer acts under the purported exercise of official powers, they are entitled to protection under Section 197 of the CrPC. This protection exists for a valid reason so that the public servants can perform their duties fearlessly.

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38. In the case of **G.C.Manjunath and ors vs. Seetaram** *supra*, the Hon'ble Apex Court, while dealing with the provisions of Section 197 of the CrPC read with section 170 of the Karnataka Police Act, observed that the law does not offer protection if the official role is used as a mere excuse to commit wrongful acts. However, it was held that the protection of prior sanction will be available when there is a reasonable connection between the act and their duty. While enunciating when the protection of prior sanction will be applicable, this Court held that even if a police officer exceeds his official powers, as long as there is a reasonable connection between the act and his duty, they are still entitled to the protection requiring prior sanction. Excessiveness alone does not strip them of this safeguard. The language of both Section 197 of the CrPC and Section 170 of the Police Act is clear that sanction is required not only for acts done in the

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discharge of official duty as well as for the acts purported to be done in the discharge of official duty and/or acts done “under colour of or in excess of such duty or authority.

39. The Hon’ble Apex Court in the case of **P.K.Pradhan vs. State of Sikkim** *supra* held that the legislative mandate engrafted in sub section (1) of Section 197 touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code; any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only

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point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of official duty. Thus, from the various decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused

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complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped.

40. In the present case, the applicants are claiming that they did not abuse their position as public servants. The statements of the witnesses and the medical certificates show that the informant and her husband had been to the police station for lodging report and they were assaulted. At this stage, these statements and medical certificates, after taking at their face value,

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establish a *prima facie* case to constitute the offence. Perusal of the record shows that the informant has made allegations that she was assaulted on 20.3.2018 as there was quarrel between her and her relatives and her relative caught hold her husband and assaulted him and, therefore the informant and her husband went to the police station and lodged the report . At the relevant time, applicant No.1 was present and convinced her not to lodge the FIR. The informant and her husband met applicant No.1, but applicant No.1 used abusive words against them and the husband was assaulted with belt. The informant was also manhandled. Their presence in the police station and injuries sustained by them support the said version. The statements of the informant's husband, Geeta Ramteke, Geetabai Korewar, and Mumtaj Pathan, and Shalu Bawane also corroborate the version. The medical certificate of the informant shows that she

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has sustained contusions over right cheek, contusion abrasions over right knee, and tenderness over scalp. The husband of the informant has also sustained injuries i.e. multiple contusions over back, redness over both knees and injury left arm.

41. So, the factual aspect of the *prima facie* case is made out against the applicants. The act/offence committed by the applicants can safely be said to have been outside the scope of their official duty and, therefore, sanction for prosecution is not required. Merely because the applicants are police officials, it would not provide any shield to them. There is no direct or reasonable connection between their act and the official duty and, therefore, the order impugned rejecting the B-Summary Report and issuance of summons is legal and proper and no interference is called for.

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42. In this view of the matter, the Criminal Revision Application being devoid of merits is liable to be dismissed and the same is **dismissed**.

43. Fees of learned counsel Mrs. Punam Pisurde appointed for the non-applicant No..2 be quantified and the same be paid to her as per Rules.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!