



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

CRM-M No.6511 of 2015

Date of decision: 13th January, 2025

Dharambir & another

... Petitioners

Versus

Jagbir Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vishal Sharma, Advocate for the petitioners.

Mr. Sudhir Hooda, Advocate for the respondent.

MANJARI NEHRU KAUL, J.

1. The present petition has been filed by the petitioners, who are serving officials in the Haryana Police, challenging their summoning by the trial Court vide order dated 08.07.2014 (Annexure P-3) under Section 217 of the IPC in a complaint filed by the respondent/complainant.

2. Learned counsel for the petitioners has contended that the petitioners have been falsely implicated. It is submitted that FIR No.40 dated 26.02.2008 under Sections 148, 149, 307 of the IPC and sections 25/54/59 of the Arms Act, 1959 pertaining to Police Station Kharkhoda was initially registered at the instance of the respondent/complainant. The petitioners, in their capacity as Investigating Officers, conducted a fair and impartial investigation. Statements of nearly 40 witnesses were recorded, and despite repeated requests, the respondent chose not to

associate himself with the investigation, which was duly noted in the official record.

3. Upon completion of the investigation, the accused named in the FIR were found to be innocent, leading to the submission of an untraced report. The respondent subsequently filed the instant complaint, alleging that the petitioners deliberately conducted an improper investigation and thereby committed an offence under Section 217 of the IPC.

4. It has been further argued that the trial Court erred in summoning the petitioners vide the impugned order without obtaining prior sanction under Section 197 of the Cr.P.C. The petitioners acted within the scope of their official duties while investigating FIR No.40, and in the absence of requisite sanction, cognizance could not have been taken against them.

5. Learned counsel for the respondent, on the other hand, has asserted that the petitioners disobeyed the law with an intent to shield the accused named in the FIR No.40. The respondent, who sustained a bullet injury in the incident, promptly named the accused, yet the petitioners declared them innocent.

6. However, in response to a specific query by the Court, learned counsel for the respondent conceded that no prior sanction under Section 197 Cr.P.C. was obtained for prosecuting the petitioners. The learned counsel for the respondent instead argued that no such sanction was necessary, as the alleged acts of the petitioners were not performed in the discharge of their official duties.

7. I have heard learned counsel for the parties and perused the relevant material on record.

8. The primary issue for determination in the present case is whether the protection afforded to public servants under Section 197 Cr.P.C. is applicable to the petitioners. Section 197 Cr.P.C. provides:

“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 :

[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.]

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.

[(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

[Added by Act 43 of 1991, Section 2 (w.e.f. 2-5-1991).]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is

to be conducted, and may specify the Court before which the trial is to be held.”

9. The aforesaid provision is intended to shield public servants from vexatious prosecution for acts done in good faith as part of their official duties. For its application, there must exist a reasonable nexus between the act complained of and the performance of official duties.

10. The Hon'ble Supreme Court in '**Om Prakash Yadav vs. Niranjan Kumar Upadhyay**' 2024 INSC 979, emphasized that the determination of the requirement for sanction under Section 197 Cr.P.C. depends on the facts and circumstances of each case and the stage at which the issue is raised. It would be apposite to reproduce the relevant observations made in **Om Parkash Yadav's case (supra)**, which reads thus:

“65. Thus, the legal position that emerges from a conspectus of all the decisions referred to above is that it is not possible to carve out one universal rule that can be uniformly applied to the multivarious facts and circumstances in the context of which the protection under Section 197 CrPC is sought for. Any attempt to lay down such a homogenous standard would create unnecessary rigidity as regards the scope of application of this provision. In this context, the position of law may be summarized as under: -

(i) The object behind the enactment of Section 197 CrPC is to protect responsible public servants against institution of possibly false or vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act in their official capacity. It is to ensure that the public servants are not prosecuted for

anything which is done by them in the discharge of their official duties, without any reasonable cause. The provision is in the form of an assurance to the honest and sincere officers so that they can perform their public duties honestly, to the best of their ability and in furtherance of public interest, without being demoralized.

(ii) The expression “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty” in Section 197 CrPC must neither be construed narrowly nor widely and the correct approach would be to strike a balance between the two extremes. The section should be construed strictly to the extent that its operation is limited only to those acts which are discharged in the “course of duty”. However, once it has been ascertained that the act or omission has indeed been committed by the public servant in the discharge of his duty, then a liberal and wide construction must be given to a particular act or omission so far as its “official” nature is concerned.

(iii) It is essential that the Court while considering the question of applicability of Section 197 CrPC truly applies its mind to the factual situation before it. This must be done in such a manner that both the aspects are taken care of viz., on one hand, the public servant is protected under Section 197 CrPC if the act complained of falls within his official duty and on the other, appropriate action be allowed to be taken if the act complained of is not done or purported to be done by the public servant in the discharge of his official duty.

(iv) A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such that it lies within the scope and range of his official duties.

The act complained of must be integrally connected or directly linked to his duties as a public servant for the purpose of affording protection under Section 197 CrPC.

Hence, it is not the duty which requires an examination so much as the “act” itself.

(v) One of the foremost tests which was laid down in this regard was -

whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.

(vi) Later, the test came to be re-modulated. It was laid down that there must be a reasonable connection between the act done and the discharge of the official duty and the act must bear such relation to the duty such that the accused could lay a reasonable, but not a pretended or fanciful claim, that his actions were in the course of performance of his duty. Therefore, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be committed by the public servant either in his official capacity or under the color of the office held by him such that there is a direct or reasonable connection between the act and the official duty.

(vii) If in performing his official duty, the public servant acts in excess of his duty, the excess by itself will not be a sufficient ground to deprive the public servant from protection under Section 197 CrPC if it is found that there existed a reasonable connection between the act done and the performance of his official duty.

(viii) It is the “quality” of the act that must be examined and the mere fact that an opportunity to commit an offence

is furnished by the official position would not be enough to attract Section 197 CrPC.

(ix) The legislature has thought fit to use two distinct expressions “acting” or “purporting to act”. The latter expression means that even if the alleged act was done under the color of office, the protection under Section 197 CrPC can be given. However, this protection must not be excessively stretched and construed as being limitless. It must be made available only when the alleged act is reasonably connected with the discharge of his official duty and not merely a cloak for doing the objectionable act.

(x) There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down such a rule. However, a “safe and sure test” would be to consider if the omission or neglect on the part of the public servant to commit the act complained of would have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, the protection under Section 197 CrPC can be granted since there was every connection with the act complained of and the official duty of the public servant.

(xi) The provision must not be abused by public servants to camouflage the commission of a crime under the supposed color of public office. The benefit of the provision must not be extended to public officials who try to take undue advantage of their position and misuse the authority vested in them for committing acts which are otherwise not permitted in law. In such circumstances, the acts committed must be considered de hors the duties which a public servant is required to discharge or perform.

(xii) On an application of the tests as aforesaid, if on facts, it is prima facie found that the act or omission for which the accused has been charged has a reasonable connection with the discharge of his official duty, the applicability of Section 197 CrPC cannot be denied.”

11. In the present case, the allegations against the petitioners pertain to the manner in which they conducted investigation in FIR No.40. It is undisputed that conducting investigations falls squarely within the domain of official duties of police officers. Allegations that the investigation was improper or cryptic do not detach the act from the scope of official duties.

12. To hold otherwise would undermine the purpose of Section 197 Cr.P.C. rendering it otiose. The trial Court failed to consider that the alleged acts had a direct and reasonable nexus with the discharge of the official duties by the petitioners. Without the requisite sanction, the Court could not have taken cognizance against the petitioners.

13. In view of the above, this Court has no hesitation to hold that the trial Court erred in summoning the petitioners vide impugned order (Annexure P-3) without awaiting sanction under Section 197 of the Cr.P.C. Accordingly, the petition is allowed and the impugned order (Annexure P-3), summoning the petitioners, is set aside qua the petitioners.

(MANJARI NEHRU KAUL)
JUDGE

January 13, 2025

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No