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

+ **CRL.REV.P. 1092/2019**

DEVENDRA KUMAR GUPTA

.....Petitioner

Through: In person.

versus

NITHALI RAM & ANR.

.....Respondents

Through: Mr. Jagdish Chandra, CGSC with Mr.
Shubham Kumar Mishra, Advocate
for UOI.

+ **CRL.REV.P. 1094/2019**

DEVENDRA KUMAR GUPTA

.....Petitioner

Through: In person.

versus

PRATAP KUMAR PANIGRAHI & ANR.

.....Respondents

Through: Ms. Radhika Bishwajit Dubey, CGSC
with Ms. Gurleen Kaur Waraich,
Advocate for UOI.
Mr. Jagdish Chandra, CGSC with Mr.
Shubham Kumar Mishra, Advocate
for UOI.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

29.01.2025

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1. The present revision petition filed under Section 397 of the Code of



Criminal Procedure, 1973¹ challenges order dated 10th July, 2019 passed by the Special Judge/ NDPS Act, Patiala House Court in Criminal Revision No. 241/2019 and Criminal Revision No. 34/2019. The said petitions were preferred by the Respondents against order dated 10th August, 2018 issued by the Court of Metropolitan Magistrate, Patiala House Courts, taking cognizance of a complaint under Sections 499/500/120B of the Indian Penal Code, 1860² and summoning the Respondents.

2. A brief background leading to the filing of the present petitions is as follows:

2.1. On 03rd June, 2013, Petitioner (the Complainant) joined the Department of Telecom,³ Sanchar Bhawan, as DDG (Civil). By a communication dated 08th August, 2013, his duties were allocated, which were subsequently reallocated through another communication dated 03rd September, 2013, issued under the signatures of Mr. P.K. Panigrihi, then Senior DDG (BW) at DoT.

2.2. On 26th April, 2014, the Petitioner was transferred from DoT (HQ) to TEC as DDG (Civil). Aggrieved by this transfer, the Petitioner submitted a representation through Senior DDG (TEC) on 14th July, 2017. The Senior DDG, in turn, referred the matter to Senior DDG (BW), DoT, through a letter dated 22nd July, 2014.

2.3. Meanwhile, the Petitioner had filed an application under the Right to Information Act, 2005 whereupon he obtained access to a note sheet dated 22nd May, 2014. The relevant portion of the said note sheet reads as follows:

¹ “Cr.P.C.”

² “IPC”

³ “DoT”



“6. It may be mentioned here that Sri D K Gupta was earlier working in the Deptt. Of Post (Civil), HQ, New Delhi. Due to serious lapses found on the part of Sri D K Gupta Secretary (Post) desired for his transfer and placed at the disposal of the Deptt. Of Telecommunications. Accordingly, Sri Gupta was transferred from DOP to BSNL at that time.

xx ... xx ... xx

8. It may be mentioned here “this being the position in DOP and the fact that CWG wing is treated as sensitive officer/staff in the ODI list not to be posted in this wing, DOT HQ, it is proposed to transfer Shri D K Gupta back to TEC New Delhi.”

2.4. The Petitioner contended that these allegations were fabricated to justify his transfer. He maintained that he was neither part of the CWG Wing nor listed in the Doubtful Integrity list.⁴ Further, he asserted that the Respondents, particularly Mr. P.K. Panigrihi, misled their superiors and suppressed material facts to orchestrate his transfer. Consequently, he lodged a complaint on 11th August, 2014, at Police Station Parliament Street, alleging fabrication of documents and abuse of official position by the Respondents.

2.5. The Trial Court took cognizance by order dated 03rd March, 2017 and thereafter, the statement of Petitioner was recorded on 06th July, 2018, leading to the summoning order dated 10th August, 2018.

2.6. Aggrieved, the Respondents preferred a revision petition arguing that they had prepared a transfer proposal as part of their official duties. They contended that the proposal dated 22nd May, 2014 for transfer was recommended by the Director Civil, Incharge of Civil Wing (DOT) and Mr. P.K. Panigrihi was a member of the said Committee along with AS(T), Member (T) and Secretary (T). It was further urged that since the note sheet was prepared during the course of their official duty, cognizance could not

⁴ “ODI”



have been taken in the absence of sanction under Section 197 of Cr.P.C.

2.7. The Revisional Court allowed the petitions in the following terms:

“10. The main grievance of a complainant is that accused Nithali Ram prepared a note sheet dated 22.05.2014 with proposal to transfer the complainant back to TEC as the post in CWG Wing is treated as sensitive and officers/staff in the ODI list not to be posted in this wing. Admittedly as per Annexure A7 filed along with complaint the CWG wing is a sensitive wing however it is not specifically mentioned whether DDG (Civil) is sensitive or not. Further more, the name of the complainant is not found in any ODI list, but as per note sheet, he has been served the charge sheet under rule 14 for major penalty vide vigilance memo dated 22.04.2014. The complainant during arguments not disputed the fact that CWG is not a sensitive wing and also not disputed the filing of the charge sheet but only raised the plea that post of DDG Civil is not sensitive which he was holding and also the fact that the charge sheet is malafide and proceedings were withdrawn by the department and therefore he cannot be considered an officer of doubtful integrity.

11. The main arguments on behalf of revisionists that DDG Civil is a senior post in CWG wing therefore falls in the category of sensitive post, and though there is no formal ODI list in which the name of the complainant is mentioned however as the charge sheet under rule 14 for major penalty has been served over him therefore he can be considered as the officer of ODI list without any formal inclusion. It is also submitted that this note sheet for proposal to transfer was prepared in discharge of official duty by revisionist Nithali Ram which was recommended by Director Civil thereafter submitted the proposal to committee consisting of the revisionist P K Panigrihi Sr DDG (BW), Member (T), Addl Secretary (T), Secretary Telecom. The said committee approved the proposal with direction to put the note for approval of the Ministry of Communication and Information Technology and after approval the transfer was given effect.

12. Whether the post of DDG Civil is sensitive or the fact whether mere filing of charge sheet under rule 14 for major penalty makes the complainant a candidate of an ODI list are disputed question of fact, however the said proposal note dated 22.05.2014 of transfer prepared by revisionist Nithali Ram in discharge of his official duty which was duly approved by the Director Civil and put up before Committee consisting of revisionist P K Panigrihi Sr. DDG (BW) and other members and was finally approved by the minister. The factum of preparation of proposal of transfer in this scenario cannot be inferred as not part of a official duty, therefore in my view, the prior sanction before taking cognizance is required and the judgments as relied by the complainant are not applicable in the present facts and circumstances. Furthermore, the



decision of transfer was collective decision. There is nothing in pre summoning testimony of the complainant (CW1) that he has made any representation before superior authority against the revisionists for malafidely creating the said note with motive to defame the complainant. Accordingly the impugned order dated 10.08.2018 summoning the revisionists P K Panigrihi and Nithali Ram are set aside. Both the revisionists stand discharged. Bail bonds also stand discharged.”

3. Dissatisfied with the above outcome, Mr. Devendra Kumar Gupta the Petitioner appearing in person, argues that the transfer order was in violation of the Transfer and Posting Policy. The Respondents falsely stated that he was working on a sensitive post and was included in the ODI list to justify an illegal transfer aimed at humiliating and defaming him. The transfer was an illegal act, executed with sole intention to humiliate and defame by misusing their official position. The misrepresentation of facts in the transfer proposal does not qualify as an act performed in the discharge of official duty, thereby negating the applicability of Section 197 of Cr.P.C. Additionally, it is argued that there is no finding in the impugned order that the post of DDG (Civil) is a sensitive post or not. The Revision Court also failed to take note that Petitioner was not found in the ODI list whereas in the complaint, a reply of Director (Civil) stated that the post of DDG (Civil) is not sensitive. Similarly, the orders of DOT also establish that the post of DDG (Civil) is not declared as sensitive.

4. The Court has considered the afore-noted contentions. The Revisional Court, while exercising powers under Section 397 of Cr.P.C., held that the preparation of the transfer proposal was in furtherance of official duties, warranting prior sanction under Section 197 of Cr.P.C.

5. In the opinion of the Court, that the Revisional Court's conclusion is in consonance with the settled legal principles. Section 197 of Cr.P.C.



mandates prior sanction by the appropriate Government for the Court to take cognizance of an offence alleged to have been committed by a public servant while acting or purporting to act in the discharge of official duties. The rationale behind this provision is to protect public servants from vexatious litigation arising from actions taken in good faith in the course of their duties. In *P.K. Pradhan v. State of Sikkim*,⁵ the Supreme Court held that the offence alleged to have been committed must be related in some manner, with the discharge of official duty. The Supreme Court further highlighted that issue of Section 197 of Cr.P.C. could certainly be raised at any stage, including post-cognizance or even after conclusion of trial. This principle has been reiterated by the Supreme Court in *Directorate of Enforcement v. Bibhu Prasad Acharya*.⁶

6. In the present case, the Petitioner's allegations of defamation under Section 499/500 of IPC are hinging on the note sheet dated 22nd May, 2014. This note sheet, in the opinion of the Court, even if factually incorrect and defamatory, was prepared by the officers in their official capacity. The Supreme Court has consistently held that the applicability of Section 197 Cr.P.C. depends on whether the alleged act has a direct nexus with the discharge of official duties. It is well-settled that if an act is intrinsically linked to official functions, even if it is alleged to be illegal, the protection under Section 197 applies. However, if the act is wholly unconnected with official duties or is a blatant misuse of position for personal motives, such protection is not available. In the present case, the preparation of the transfer proposal was an administrative function undertaken in the normal course of

⁵ (2001) 6 SCC 704

⁶ 2024 SCC OnLine SC 3181



service, and there is no material to suggest that it was done for a personal vendetta. Even if the contents of the note sheet were factually incorrect, the act itself was within the domain of official duty. Thus, the Revisional Court correctly applied the protection under Section 197 Cr.P.C., as any prosecution without sanction would be legally unsustainable.

7. In light of the foregoing, this Court finds no error in the Revisional Court's order requiring prior sanction for prosecution. The Petitioner's grievances, if any, are administrative in nature and do not warrant criminal proceedings against public officials acting within the scope of their official functions.

8. Accordingly, the present petitions are dismissed.

SANJEEV NARULA, J

JANUARY 29, 2025

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