

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26394 of 2019

Arising Out of PS. Case No.-126 Year-2018 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

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Ashok Kumar Yadav Son of Chandeshwari Prasad Yadav Resident of Ward No. 01, Dubiyahi, P.S.-Kishanpur, Dubiyahi, Dighia, Distt - Supaul, At present working as Circle Officer, Taradih Block, Darbhaga.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Md.Salauddin Son of Md. Zahir Alam Resident of Village - Sharifpur, P.S.- Nanpur, Distt - Sitamarhi.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Shambhu Nath Jha, Advocate
		Mr. Nirbhay Prashant, Advocate
For the State	:	Mr.Umanath Mishra, APP
For the O.P. No. 2	:	Mr. Sunil Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 19-01-2026 Heard the parties.

2. The present application has been filed for quashing the order dated 04.12.2018 passed by the learned Sub-Divisional Judicial Magistrate, Pupri, Sitamarhi in Complaint Case No. 126 of 2018 by which cognizance of offence punishable under Sections 427 and 504 of the Indian Penal Code has been taken against the petitioner without considering the relevant facts and circumstances of the case.

3. The brief facts of the case is that the complainant had preferred a complaint case against the present petitioner alleging that the petitioner in his official capacity of a Circle



Officer had passed an order for removal of encroachment stating therein that only the ancestral house of the complainant was singled out and demolished.

4. Learned counsel for the petitioner submits that the petitioner being the Circle Officer had received several representations regarding encroachment of the public road which was causing obstruction in the movement of the vehicles. Acting upon the aforesaid representation, the petitioner had issued the necessary directions to the *Anchal Amin* for measurement of the concerned land. The petitioner had duly followed the procedure and issued the relevant notices to the concerned parties. However, none of the parties had removed their encroachments.

5. It is categorically submitted by learned counsel for the petitioner that no sanction for prosecution was obtained before taking cognizance of offence and as such the cognizance order is untenable and cannot be sustained.

6. The learned APP and the learned counsel for the opposite party no. 2 have opposed the present petition and have submitted that the impugned order suffers from no illegality and infirmity.

7. I have considered the submissions of the parties and



perused the materials on record.

8. At the outset, it would be apposite to refer to the precedents on relevance of obtaining sanction for prosecution against a public servant. Recently the Hon'ble Supreme Court in the case of ***Gurmeet Kaur vs. Devender Gupta & Anr.*** reported as ***2024 SCC OnLine SC 3761*** has reiterated the object and purpose of Section 197 of the Cr. P.C. which protects the public servants from unjustified criminal prosecution for acts done while discharging their official duties and held as under:-

“25. As already noted, the object and purpose of the said provision is to protect officers and officials of the State from unjustified criminal prosecution while they discharge their duties within the scope and ambit of their powers entrusted to them. A reading of Section 197 of the CrPC would indicate that there is a bar for a Court to take cognizance of such offences which are mentioned in the said provision except with the previous sanction of the appropriate Government when the allegations are made against, inter alia, a public servant.

26. There is no doubt that in the instant case the appellant herein was a public servant but the question is, whether, while discharging her duty as a public servant on the relevant date, there was any excess in the discharge of the said duty which did not require the first respondent herein to take a prior sanction for prosecuting the appellant herein. In this regard, the salient words which are relevant under subsection (1) of Section 197 are



“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”. Therefore, for the purpose of application of Section 197, a sine qua non is that the public servant is accused of any offence which had been committed by him in “discharge of his official duty”. The said expression would clearly indicate that Section 197 of the CrPC would not apply to a case if a public servant is accused of any offence which is de hors or not connected to the discharge of his or her official duty. However, there are a line of judgments which have considered this expression in two different ways which we shall now advert to.”

9. The Hon’ble Supreme Court in the case of ***Amrik Singh vs. The State of PEPSU*** reported as ***AIR 1955 SC 309*** had explained the scope of Section 197 of the Cr. P.C and held as under:-

“8. The result of the authorities may thus be summed up : It is not every offence committed by a public servant that requires sanction for prosecution under section 197(1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of



whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution.”

10. It is a well-established principle of criminal law that a Magistrate can take cognizance of an offence under Section 190 Cr. P.C. subject to the restriction under Section 197 Cr.P.C., when an accused is a public servant.

11. Section 197 Cr. P.C mandates prior sanction from the competent authority before prosecution can proceed, ensuring that public servants are protected from frivolous, vexatious or unjustified criminal prosecution for acts performed in the discharge of their official duties. The exception provided is that the act must be intrinsically connected to the official duty. The Hon’ble Supreme Court in ***Om Prakash Yadav v. Niranjana Kumar Upadhyay & Ors.*** reported as **2024 SCC OnLine SC 3726**, has held as under:-

“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 Cr. P.C. 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 Cr.PC 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 Cr. PC 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 Cr. PC 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 Cr.PC 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 Cr.PC. 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 Cr.PC 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 Cr, PC.*

(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 Cr.PC 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 dehors 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.* (emphasis supplied)

12. In the case of ***G.C. Manjunath (supra)***, the Hon'ble Supreme Court while dealing with purported acts of excess while discharging official duties of a police officer, has held as under:-

“37. This Court in Amod Kumar Kanth v. 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



Cr.P.C.. This protection exists for a valid reason so that the public servants can perform their duties fearlessly, without constant apprehension of legal action, as long as they act in good faith. While Section 197 of the Cr.P.C. does not explicitly mention the requirement of good faith, such a condition is implied and is expressly included in several other statutes that offer protection to public servants from civil and criminal liability.

38. *While dealing with the provisions of Section 197 of the Cr. P.C., read with Section 170 of the Police Act, this Court in D. Devaraja observed that not every offence committed by a police officer automatically gets this protection. The safeguard under Section 197 of the Cr.P.C. and Section 170 of the Police Act is limited. It applies only if the alleged act is reasonably connected to the officer's official duties. 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 Cr. P.C. and Section 170 of the Police Act is clear that sanction*



is required not only for acts done in the 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”. Sanction becomes mandatory if there is a reasonable connection between the act and the officer's official duties, even if the officer acted improperly or exceeded his authority. Therefore, if a complaint against a police officer involves actions reasonably related to his official role, the Court cannot take cognisance unless sanction from the appropriate Government has been obtained under Section 197 of the Cr.P.C. and Section 170 of the Police Act....”

...

41. *In light of the aforesaid judgements, the guiding principle governing the necessity of prior sanction stands well crystallised. The pivotal inquiry is whether the impugned act is reasonably connected to the discharge of official duty. If the act is wholly unconnected or manifestly devoid of any nexus to the official functions of the public servant, the requirement of sanction is obviated. Conversely, where there exists even a reasonable link between the act complained of and the official duties of the public servant, the protective umbrella of Section 197 of the Cr.P.C. and Section 170 of the Police Act is attracted. In such cases, prior sanction assumes the character of a sine qua non, regardless of whether the public servant exceeded the scope of authority or acted improperly while discharging his duty.” (emphasis supplied).*



13. The complain has been filed against the Circle Officer because of the official action taken by him in an encroachment proceeding. From the records it appears that no sanction for prosecution was obtained and therefore the impugned order taking cognizance without sanction against the petitioner is held to be illegal.

14. In view of the above, the impugned order dated 04.12.2018 passed by the learned Sub-Divisional Judicial Magistrate, Pupri, Sitamarhi in Complaint Case No. 126 of 2018, is hereby quashed and set aside.

15. Accordingly, this application is allowed.

(Sandeep Kumar, J)

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