

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 3296 of 2017

**Sk. Moyaggen Hossen @ Sk. Moyazem Hossen
-Vs-
State of West Bengal & Ors.**

For the Petitioners : Mr. D. N. Chatterjee
Mr. R. K. Biswas
Mr. S. Mondal

For the Opposite Party No.2 : Mr. Satadru Lahiri
Mr. Safdar Azam

Hearing concluded on : 05.02.2026

Judgment on : 13.02.2026

UDAY KUMAR, J.: -

INTRODUCTION

1. The inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973, is invoked here to examine a fundamental strain between the statutory protective umbrella of Section 197 Cr.P.C. and the accountability of public servants for alleged criminal transgressions, that touches upon the very marrow of the Rule of Law: Does the "protective umbrella" of Section 197 Cr.P.C. extend to acts of blatant criminality, or does it merely shield the honest discharge of official duty?

2. This revision challenges an order dated September 11, 2017, passed by the Learned Additional District Judge, Fast Track Court No. 1, Tamluk, by which the Sessions Court quashed a summoning order against an Assistant Sub-Inspector and a Civic Volunteer, effectively holding that the lack of government sanction creates an “impenetrable wall” against prosecution, even where the allegations involve assault and theft. This Court is now called upon to delineate the boundary where "official duty" ends and "personal criminal liability" begins, ensuring that the statutory requirement for government sanction does not inadvertently become a sanctuary for acts that are fundamentally antithetical to the rule of law.

FACTUAL MATRIX

3. The genesis of this litigation lies in an incident dated March 4, 2016. The Petitioner’s father was a witness in a pending Sessions Trial. At approximately 11:30 AM, Opposite Party No. 2 (an ASI) and Opposite Party No. 3 (a Civic Volunteer) arrived at the Petitioner’s residence to serve a Court summons. While their presence was ostensibly for a legitimate administrative purpose, the narrative quickly turned from administrative to adversarial.
4. According to the complaint, when the Petitioner informed the officers that his father was not at home and declined to receive the summons in his father's absence, the situation took a violent turn. It is alleged that the officers, acting far beyond their mandate, took unauthorized photographs, issued death threats to coerce the withdrawal of a previous case against the police, and physically assaulted the Petitioner and his brother. Most significantly, it is alleged that the ASI forcibly snatched a mobile phone valued at Rs. 2,500/-.

While the Learned Magistrate, after an inquiry under Section 200, found a *prima facie* case under Sections 323 and 379 of the IPC, the Sessions Court reversed this, viewing the absence of prior sanction under Section 197 Cr.P.C. as a total bar to prosecution.

SUBMISSIONS OF THE PARTIES

5. Mr. D. N. Chatterjee, Learned Counsel for the Petitioner vehemently argues that Section 197 is not a "charter of impunity." He submits that while the ASI was indeed on duty to deliver a document, "snatching a mobile phone" or "battery" bears no rational connection to that duty. He contends that the Sessions Court misapplied the law by granting blanket immunity for acts that are *mala fide* and entirely outside the scope of police functions.
6. Mr. Satadru Lahiri, Learned Counsel for the State and the Accused counters this by asserting that the officers were present at the spot "under the colour of office" to execute a judicial order. They argue that any friction arising during the discharge of such duty is protected. Furthermore, they point to a minor discrepancy in the timing of the incident mentioned in the complaint to suggest that the entire case is a retaliatory fabrication intended to harass diligent officers.

QUESTION FOR DETERMINATION

7. The core question that emerges for this Court's determination is:

"Whether the mandatory protection of Section 197 Cr.P.C. extends to acts of theft and assault committed by a public servant while on duty, and whether the absence of a prior sanction order legally bars a Magistrate from issuing process for such offences?"

LEGAL DISCOURSE AND FINDINGS

8. To answer this, this Court must look at the legislative intent behind Section 197 Cr.P.C. whether extended to provide a blanket immunity for all acts committed "under the colour of office,"
9. Section 197 of the Cr.P.C. provides that when a public servant is accused of an offence alleged to have been committed "while acting or purporting to act in the discharge of his official duty," no Court shall take cognizance except with the previous sanction of the appropriate Government.
10. Section 197 Cr.P.C. is a safeguard against vexatious litigation; it is not a "charter of impunity." As established in *State of U.P. v. Paras Nath Pandey* (2009) 4 SCC 383 and *Devinder Singh v. State of Punjab* (2016) 12 SCC 129, protection is available only if the act is "interrelated with the official duty so as to form part of the same transaction."
11. Regarding the "Reasonable Nexus" Test, the Hon'ble Supreme Court in *State of U.P. v. Paras Nath Pandey* (2009) 4 SCC 383 held:

"It is not every offence committed by a public servant that requires sanction... If the act complained of has no nexus, reasonable or otherwise, with the discharge of official duty, no sanction is required."
12. Further, in *Devinder Singh v. State of Punjab* (2016) 12 SCC 129, the Apex Court clarified that the protection is available only if the act is "interrelated with the official duty so as to form part of the same transaction."
13. Therefore, to draw a protection of Section 197, the act must be so interrelated with the duty as to form part of the same transaction. If the act is entirely unconnected to the official task, the protection vanishes.

- 14.** Applying these ratios here to the facts of present case, the act of service of Summons is, definitely, an official act, while the act of theft of a mobile phone and physical assault is diametrically opposed to the duty of a law enforcement officer. The "nexus" is severed the moment a public servant transitions from an officer of the law to a perpetrator of larceny.
- 15.** There is no world in which "Theft" can be considered a discharge of official duty. A police officer has the right to enter a home to serve a paper; he has no right—legal, moral, or official—to walk away with the occupant's personal property. The service of summons provided the occasion for the visit, but it did not provide the authority for the alleged theft. Therefore, the "nexus" is broken the moment the alleged theft occurs. The Learned Magistrate, at the stage of issuing process, is only required to see if there is a *prima facie* case.
- 16.** Furthermore, the Learned Sessions Court committed a material irregularity by weighing evidence like a Trial Court. Analysing a one-hour time discrepancy at the revisional stage is premature. Such "minor contradictions" are matters for cross-examination and cannot be used to stifle a prosecution at the threshold.

CONCLUSION

- 17.** The protective shield of Section 197 Cr.P.C. is meant to ensure that public servants can perform their duties without fear of frivolous prosecution; it is not a sword to be used against the citizenry. To hold that an officer can commit theft under the "colour of office" and remain immune without a government sanction would be a perversion of justice and an affront to the "Rule of Law."

18. The protection under Section 197 is not a wall of silence; it is a filter. It is intended to protect the officer who acts in good faith, not the officer who uses the “colour of office” as a cloak for larceny. The act of serving a summons provides the occasion for the officer to be at the premises, but it does not provide the authority to commit theft. The moment the ASI allegedly snatched the mobile phone, the 'reasonable nexus' was not just strained—it was ‘severed’.

ORDER

19. In view of the aforesaid deliberations, the judgment and order of the learned Revisional Court dated September 11, 2017, is modified and the matter is remanded with the following specific directions:

- a. The dismissal of the complaint is hereby set aside. The complaint is restored to its original file before the Learned 3rd Judicial Magistrate, Tamluk, for fresh consideration from the stage of Section 202/204 Cr.P.C.
- b. The Learned Magistrate shall conduct a limited inquiry to determine if the alleged acts of assault and theft are severable from the official duty of serving a summons.
- c. If the allegation of Theft (Sec. 379 IPC) is found to be independent of the summons-serving process, the Magistrate shall proceed to issue process for the same without requiring sanction.
- d. If the Magistrate determines that the Assault (Section 323 IPC) occurred as part of a scuffle inextricably linked to the discharge of duty, he shall

grant the Petitioner liberty to apply for sanction, but such a requirement shall not stay the proceedings regarding the theft.

e. The Magistrate is expressly directed to ignore minor discrepancies in timing at this stage, as a *prima facie* case does not require proof beyond reasonable doubt, but merely a ground for proceeding.

f. This inquiry and the subsequent order of the Magistrate must be concluded within four months of the communication of this judgment.

20. The Revisional Application being CRR 3296 of 2017 is disposed of accordingly.

21. All consequential Interim order/orders, if any, shall stand vacated.

22. There shall be no order as to costs.

23. The Trial Court Record (TCR), if any, shall be sent down to the Trial Court, at once.

24. Case diary, if any, be returned forthwith.

25. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)