IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.345 of 2020
Reserved on: 20.04.2026
Date of Decision: 27.04.2026

Sh. Nitesh Gupta

…….Petitioner

Versus

State of Himachal Pradesh & Anr.

… Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1] Yes.

For the Petitioner: Ms. Shikha Chauhan, Advocate.

For the Respondents: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for respondent No.1-State.

Mr. Anand Sharma, Senior Advocate with Mr. Karan Sharma, Advocate, for respondent No.2.

Sandeep Sharma, Judge:

Instant petition filed under Section 482 of Cr.P.C lays challenge to judgment dated 15.09.2020 passed by learned Additional Sessions Judge-I, Shimla, Himachal Pradesh, in Criminal Revision No.13-S/10 of 2018, affirming the order dated 31.08.2018 passed by learned Chief Judicial Magistrate, Shimla, Himachal Pradesh, thereby discharging respondent No.2, Viri Singh (in short "***accused***") for his

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[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

having allegedly committed offences punishable under Sections 323, 341, 342, 119, 167, 201, 217, 218, 220 and 506 of Indian Penal Code for want of prosecution sanction under Section 197 Cr.P.C.

2. Precisely, the facts, relevant for adjudication of the case at hand, are that on 17-3-2016, petitioner-complainant (in short "***complainant***") gave an information to traffic police personnel at Totu Chowk, Shimla, with regard to the incident of beatings given to one person by some 3-4 persons at Dhanda, near Totu, Shimla, which he witnessed, while on his way to Totu from Hiranagar. On the askance of traffic police personnel, complainant also reported the afore incident on phone number 100 to the police control room, from where he was advised to report the matter to Police Station Boileauganj. The complainant telephonically informed aforesaid incident to Police Station Boileauganj, whereafter accused, who at relevant time was Station House Officer, Police Station Boileauganj called him in the Police Station for further inquiry. The complainant was allegedly detained at police station upto late night hours i.e. 11:40 p.m. Next day i.e. on 18.3.2016 at about 8.30 a.m., the complainant was stopped by the traffic police officer at Totu Chowk, who subsequently took him to Police Station Boileauganj. Allegedly the complainant was taken to a room and was given severe beatings by the accused. Besides above, accused also used filthy and un-parliamentary

language and also snatched the mobile phone of the complainant, as result thereof, complainant was not allowed to contact his friends and family members. On account of severe beatings given by the accused, the complainant sustained injuries on his body. Though on the request of the complainant, he was sent for medical examination, but the report was given as 'perfectly fine'. At about 11.00 a.m., the uncle of the complainant tried to contact the complainant and he was informed that complainant is in the police lock-up, whereafter the wife of the complainant reached the Police Station Boileauganj, where she was also ill-treated by the accused. Accused told the complainant that the information given by him qua the alleged incident was false and there was no such incident as informed by him with regard to beatings given to a person by four persons at Dhanda. Accused prepared a kalandra against the complainant stating that the he gave false statement to the police and lodged false complaint against him regarding the incident.

3. In afore background, complainant made a detailed representation to Director General of Police, who directed DIG (CID) to conduct inquiry within one week. DIG (CID), Mr. Daljeet Kumar Thakur, after having conducted inquiry, submitted his inquiry report (Annexure P-3), wherein he arrived at a conclusion that accused was

guilty of “illegal action and serious misconduct”. In inquiry report, afore Inquiry Officer concluded as follows:-

> *“During enquiry it has been revealed that on 17/03/2016 at around 18:30 hrs between Heera Nagar and Dhainda the incident of three persons beating a person was rightly witnessed and reported by the complainant Nitesh Gupta and his Mistri to traffic constable at Totu and to land line number of PS West as well as 100 number. That the incident actually happened has also been proved by the statements of three persons namely Bal Krishan, Vikas Thakur and Sumit Thakur who were travelling in the pickup. As per their statements, Bal Krishan and Neeraj Sharma had heated arguments in the pickup and therefore they stopped the vehicle and then they pushed Neeraj Sharma forcefully from the vehicle at Naltu Nala. Thereafter, all three of them also got down and had scuttle with Neeraj Sharma. As per the first entry made by SHO Boileaugunj regarding this incident vide DDR entry No. 076 dated 17th March, 2016, time 20.13 PM, of PS Boileaugunj, made by SHO himself, Nitesh Gupta informed PS that near Naltu Nala, few boys sitting in a vehicle no. HP32-1155 have beaten a person and fled towards Shimla in this pickup* ***(DDR placed as annexure 'EE’).*** *The complainant Mr. Nitesh Gupta did not make any false statement, nor he obtained any undue benefit, nor he had any intention of causing harm to any person. It has been found that he did not know any of the 4 persons who were involved in the fight at Naltu Nala near Dhainda. Moreover the information regarding the alleged beating of one person by some people at Naltu Nala on 17-03-2016 evening has also been corroborated by the statements of Mr. Surjeet Singh Raju @ Kaka, driver of the Taxi No. HP01A-4854 (Alto) and Mr. Samarth Kumar Sharma, owner of the Taxi. They have confirmed that some people were beating a person on 17/03/2016 at Naltu Nala near Dhainda. This fact has further been proved by the statement of Mr. Neeraj Sharma, S/O Shri Krishan Lal who has stated that at Naltu Nala he was pushed from the Pick-up by 3 persons namely Vikas, Mugali etc. and all 4*

had altercation/ scuffle and heated arguments and that the three had pushed him around for 5/6 minutes.

2. As per the statements of 2 persons namely Sanjay Kumar and Rajinder Kumar who were in the lockup of police station Boileaugunj on 18/03/2016. Nitesh Gupta was beaten by SHO Viri Singh on 18/03/2016 in P.S. Boileaugunj and was also made 'murga'. Medical report which was obtained by the undersigned on 21 March, 2016 has shown multiple simple injuries of more than 72 hrs duration (placed as annexure 'KK'). No police officer has the authority to call, thrash and harass the informer and implicate him in false case. It amounts to misconduct.

3. There is no record of outgoing/ incoming calls on the mobile of complainant Nitesh Gupta between 10:04 hrs to 12:04 hrs on 18th March, 2016 except an incoming call from his uncle which was answered by SHO/ police staff as per the CDR which reveals that mobile was taken into possession by SHO PS West/staff of PS and Nitesh was not allowed to make calls. (placed as annexure 'LL')

4. In the supplementary statement of Sh. Nitesh Gupta, he has stated that cash of about Rs. 20,000/- was found missing from his bag which was kept by SHO along with his mobile after he returned from PS on 18th March, 2016. This fact has not been supported by any of the other witnesses including his wife and hence not proved.

5. Regarding putting the complainant in the lockup as per the statements of 2 accused persons namely Sanjay Kumar and Rajinder Kumar who were already in the lockup. Nitesh Gupta was put in the lack-up for some time. It amounts to misconduct.

6. It is also a fact that the vehicle owner Bal Krishan was not challaned to not stopping the vehicle on the direction of Police Officer at Totu chowk. He was also not challaned for drunken driving

and for not possessing driving license and insurance certificate. It is unprofessional on the part of SHO.

7. Misbehavior by SHO Boileaugunj with Smt. Aarti Gupta, W/O Nitesh Gupta could not be proved.

Hence, enquiry report along with Statements recorded and supporting documents collected in original during the course of enquiry is submitted for your perusal and necessary action please.

4. In nutshell, Inquiry Officer concluded that incident with regard to beatings given to one person by four persons at Dhanda had actually happened. Three persons namely, Bal Krishan, Vikas Thakur and Sumit Thakur, who were travelling in the pickup, deposed before Inquiry Officer that Bal Krishan and Neeraj Sharma had heated arguments in the pickup and therefore, they stopped the vehicle and then they pushed Neeraj Sharma forcefully from the vehicle at Naltu Nala. Thereafter, all three of them also got down and had scuffle with Neeraj Sharma. Though complainant Mr. Nitesh Gupta did not make any false statement, nor obtained any undue benefit and had no intention of causing harm to any person but yet he was beaten by SHO Viri Singh on 18/03/2016 at P.S. Boileaugunj and was also made 'murga' as stated by two persons namely Sanjay Kumar and Rajinder Kumar, who at relevant time were in lock-up of Police Station Boileauganj on 18.03.2016. Medical report obtained by the Inquiry

Officer on 21 March, 2016 further revealed that complainant Nitesh Kumar suffered multiple simple injuries. Inquiry Officer categorically concluded in his report that no police officer has the authority to call, thrash and harass the informer or to implicate him in a false case and it amounts to misconduct (Annexure P-4).

5. On the basis of afore inquiry conducted by DIG (CID), FIR No.14 of 2016, dated 17.05.2016, under Sections 323, 341, 342, 119, 167, 201, 217, 218, 220 and 509 of Indian Penal Code came to be registered at Police Station Bharari, District Shimla, Himachal Pradesh, against the accused, who was suspended and departmental proceedings were also initiated against him. Learned Chief Judicial Magistrate, Shimla, Himachal Pradesh, before whom the final report under Section 173 Cr.P.C came to be lodged, discharged accused vide order dated 31.08.2018 (Annexure P-2).

6. Being aggrieved and dissatisfied with afore order, complainant filed criminal revision petition under Section 397 of Cr.P.C in the court of learned Additional Sessions Judge (I), Shimla, Himachal Pradesh, but same was dismissed, as a result thereof, order of discharge passed by learned trial Court came to be upheld. In the afore background, complainant has approached this Court in the instant proceedings, praying therein to set aside the order dated 15.09.2020 passed by learned Additional Sessions Judge (I), Shimla,

Himachal Pradesh, Himachal Pradesh, thereby affirming the order of discharge passed by learned trial Court.

7. Pursuant to notices issued in the instant proceedings, respondent-State as well as respondent No.2 have filed reply, wherein facts, as have been detailed hereinabove, have not been disputed. Respondent-State has virtually accepted the claim of the petitioner. However, respondent No.2, in his reply, has attempted to justify the order passed by learned trial Court, thereby discharging him on the ground that alleged act of beating, if any, was committed by him in the discharge of his official duties, as such, he could not have been prosecuted without there being prosecution sanction under Section 197 Cr.P.C.

8. I have heard learned counsel for the parties and gone through case.

9. Precisely, the grouse of the complainant, as has been highlighted in the petition and further canvassed by Ms. Shikha Chauhan, learned counsel representing the complainant, is that both the learned Courts below committed error, while passing impugned orders in the instant proceedings because before accepting the plea of discharge made at the behest of the accused, no effort, if any, was made by both the Courts below to examine the inquiry report submitted by DIG (CID), who had categorically reported that no police

officer has the authority to call, thrash or harass the informer and implicate him in false case and such act amounts to misconduct. She further argued that no act of giving beatings and ill-treatment of the accused can be said to be in discharge of public duty, rather such act of him falls in the category of dereliction of duty and misuse of power, as such, there was no requirement, if any, to obtain sanction under Section 197 Cr.P.C. before prosecuting him in the competent Court of law. In support of her aforesaid arguments, she placed reliance upon the judgment passed by Hon'ble Apex Court in ***Devinder Singh and others Vs. State of Punjab though CBI, (2016) 12 Supreme Court Cases 87***, wherein Hon'ble Apex Court held that sanction is required only where alleged act has a reasonable and rational nexus with the official duties. In afore case, Hon'ble Apex Court also summarized principles to be kept in mind, while granting prosecution sanction under Section 197 Cr.P.C.

10. Mr. Rajan Kahol, learned Additional Advocate General, while referring to the reply filed at the behest of the respondent-State, also argued that though it is an admitted fact that prosecution sanction was not obtained prior to initiating proceedings against the accused, but by no stretch of imagination acts of giving beatings, ill-treatment and harassment as alleged by the complainant at the hands of accused are justifiable at all, as such, FIR was rightly lodged

against him on the direction issued Director General of Police, who besides suspending the accused, also initiated disciplinary proceedings.

11. Mr. Anand Sharma, learned Senior Counsel for the accused, duly assisted by Mr. Karan Sharma, Advocate, while supporting the impugned orders passed by the courts below, thereby discharging the accused for his having committed offences punishable under aforesaid provisions of law, vehemently argued that there is no illegality or infirmity in the same, as such, no interference is called for. While referring to Section 197 Cr.P.C., Mr. Sharma, learned Senior Counsel, submitted that whenever some act is done by a public servant in discharge of official duties, sanction under Section 197 Cr.P.C. is not necessary. He submitted that though there is no material available on record suggestive of the fact that complainant was given beatings, if any, by the accused, but even if it is presumed that during investigation, he was heckled by the accused, such act of him can be said to be a part of investigation, which is always conducted in discharge of public duty. If it is so, no prosecution against him could have been initiated without there being prosecution sanction under Section 197 Cr.P.C.

12. Since facts, as have been noticed hereinabove, are not in dispute, this Court need not to deal with them elaborately at this

stage, but for adjudication of the case at hand it may be noticed that complainant, after having witnessed one incident, whereby one person was given beatings by four persons, gave information to the Police Station Boileauganj on 07.03.2016 telephonically, whereafter he was summoned to the Police Station and giving beatings. On 18.03.2016, complainant was stopped by traffic police official at Totu Chowk, Shimla, from where he was taken to Police Station Boileauganj, where accused not only gave him beatings, but also hurled abuses. Besides, snatching his mobile phone, complainant was also confined in a locker. Moreover, accused, besides, giving beatings to the complainant on the pretext that he had lodged false report, also filed kalandra against him. It is not in dispute that on the representation made by the complainant, Director General of Police got conducted inquiry from DIG (CID), who, after having recorded statements of number of persons, submitted an inquiry report (Annexure P-4), specifically stating therein that no false information with regard to beatings given to one person by four persons was given by the complainant, rather same information was correct, but yet accused not only kept the complainant in illegal custody but gave him beatings, which fact was further established by the Medical report obtained by the Inquiry Officer. In inquiry, it also came to be revealed that complainant was treated inhumanely as he was made “murga”

and was kept in illegal detention. On the basis of aforesaid inquiry report, FIR came to be lodged against the accused under relevant provisions of law and he was also suspended. Though police, after having completed investigation, filed a challan in the competent Court of law, but since prior to launching prosecution, no prosecution sanction was obtained under Section 197 Cr.P.C., trial Court discharged the complainant for want of prosecution, which order was further upheld by learned Additional Sessions Judge (I), Shimla.

13. Precisely, the question, which needs to be decided in the in case at hand, is that "whether prosecution sanction under Section 197 Cr.P.C is required to be taken in all cases in a routine manner or rather same can be dispensed with in certain cases?" In the case at hand, precise arguments raised at the behest of the complainant is that acts of beating and illegal detention of the complainant at the hands of accused, especially in light of findings returned by the Inquiry Officer in his report (Annexure P-4), cannot be said to be in discharge of his official duty. If it is so, no sanction is/was required under Section 197 Cr.P.C. At this stage, it would be apt to take note of Section 197 of Cr.P.C, which reads as under:-

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

[Explanation. - For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB,] [Inserted by Criminal Law (Amendment) Act, 2013] or section 509 of the Indian Penal Code.] [Inserted by Act 63 of 1980, Section 3 (w.e.f. 23.9.1980).]

(2)No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3)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 tri*al is to be held

13. Careful perusal of aforesaid provisions of law reveals that the when a public servant 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 of the Government, meaning thereby, a public servant, who is not removable from his office save by or with the sanction of the Government cannot be criminally prosecuted unless sanction under Section 197 Cr.P.C. is obtained, provided that mischief which is alleged against him was committed while he was acting or purporting to act in the discharge of official duty. If the act complained of has a nexus with the official duty, in that case, the public servant cannot be subjected to prosecution without sanction of the Government. The Apex Court, in Criminal Appeal No.458 of 2020, titled as ***D. Devaraja Vs. Owais Sabeer Hussain***, vide judgment dated 18.06.2020, has elaborately discussed about the requirement of sanction, referring to numbers of its earlier judgment and finally concluded that the object of Section 197 Cr.P.C. is to prevent public servants from being subjected to vexatious proceedings for the acts which are done in discharge of official duty or committed in excess of such duty or authority. While placing heavy reliance upon the afore judgment rendered by Hon'ble Apex Court, Mr. Anand Sharma, learned Senior Counsel for the accused, argued that since alleged overt act or mischief is said to have been committed while discharging official duty, the court below rightly

discharged the accused for want of prosecution sanction under Section 197 Cr.P.C.

14. Ms. Shikha Chauhan, learned counsel for the complainant, while referring to judgment passed by Hon'ble Apex Court in ***Satyabrata Lenka Vs. State of Orissa and others MANU/OR/0421/2017 and Sangram Keshari Behera Vrs. Niladri Dhir 2012 SCC Online Ori 316,*** submitted that before taking cognizance of the offence against a public servant, an enquiry has to be conducted to ascertain as to whether the person, against whom the complaint has been filed, discharged the official duty at the time of alleged incident and in case, it is found that act complained of has/had no nexus with the official duty, in that case, the public servant can be prosecuted without there being prosecution sanction.

15. It is apparent from the aforesaid provision of law as well as law laid down by Hon'ble Apex Court that a public servant cannot be criminally prosecuted unless sanction under Section 197 Cr.P.C. is obtained, especially when the mischief which is alleged against him was committed while he/she was acting or purporting to act in the discharge of official duty. Next question, which needs to be determined in the case at hand, is "Whether acts of giving beating and illegal detention of the complainant allegedly committed by respondent No.2 can be said to be in discharge of public duty or not?"

16. Though both the courts below have arrived at a conclusion that alleged act, for which accused is prosecuted, was done in discharge of official duty as public servant, but having carefully perused inquiry report submitted by DIG (CID), this Court has no hesitation to conclude that both the courts below, before arriving at a conclusion, as detailed hereinabove, failed to peruse the record of the case. Had the courts below attempted to look into the final report submitted under Section 173 of Cr.P.C in its entirety along with documents, especially inquiry report submitted by DIG (CID) findings to the effect that act, for which complainant is proposed to be prosecuted, was committed in discharge of official duty would not have come on record. Alleged acts of beating as well as illegal detention of the complainant by the accused has been attempted to be justified by both the courts below as well as accused on the ground that since complainant herein had furnished false information with regard to beatings given to one person by four persons at Dhanda, accused rightly investigated him and act of heckling or the alleged beating was committed in discharge of official duty. However, as has been detailed hereinabove, on the complaint of the complainant, inquiry was got conducted by Director General of Police, Himachal Pradesh, from DIG (CID), who after having conducted detailed inquiry, gave a finding that incident of beatings given to one person by

four persons was correct and no false information was given by the complainant to the accused, who, instead of appreciating the informer, not only gave him beatings, but also illegally detained him for few hours without there being any authority of law.

17. In inquiry report, Inquiry Officer categorically concluded that no police officer has the authority to call, thrash and harass the informer and implicate him in false case, such act of the accused amounts to misconduct. On the basis of afore report, accused was not only suspended, but criminal case was also initiated against him. In afore background, by no stretch of imagination alleged acts of beating as well as illegal detention of the complainant at the hands of the accused can be said to be in discharge of public duty. If it is so, this Court is persuaded to agree with Ms. Shikha Chauhan, learned counsel for the complainant, that there was no requirement, if any, for prosecution sanction under Section 197 Cr.P.C before initiating criminal prosecution against the accused.

18. Very object and purpose of Section 197 Cr.P.C. is to prevent public servants from being subjected to vexatious proceedings for the acts which are done in discharge of official duty or committed in excess of such duty or authority. The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability to further public

duty. However, performance of official duty under colour of public authority cannot be camouflaged to commit crime. Once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned, but definitely public servant is not entitled to indulge in criminal activities. To that extent, Section 197 Cr.P.C. has to be construed narrowly and in a restricted manner as has been held by Hon'ble Apex Court in ***Devinder Singh*** (supra), wherein Hon'ble Apex Court categorically held that it is no part of official duty to commit offence. Accused is not debarred from producing the relevant documentary materials which can be legally looked into without any formal proof to support the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty thereby requiring sanction of the appropriate authority, but such questions are not required to be considered at a preliminary stage because same shall be decided by learned trial Court in totality of evidence.

19. There cannot be a 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 any such rule, but once facts of the case, as detailed hereinabove, clearly reveal that complainant herein

had furnished correct information with regard to beatings given to one person by four persons at Dhanda and such fact was fully known to the accused, and yet he gave beatings to the complainant and kept him in illegal custody, such acts of him cannot be said to be in discharge of public duty. In ***Devinder Singh*** *(supra)*, Hon'ble Apex Court laid down certain principles on the issue of when sanction is required and the stage(s) at which the question can be raised/adjudicated can be summarized hereunder:-

> *35. In S.K. Zutshi v. Bimal Debnath [S.K. Zutshi v. Bimal Debnath, (2004) 8 SCC 31 : 2004 SCC (Cri) 2096] this Court has emphasised that official duty must have been official in nature. Official duty implies that the act or omission must have been official in nature. If the act is committed in the course of service but not in discharge of his duty and without any justification then the bar under Section 197 CrPC is not attracted. This Court has laid down thus : (SCC pp. 38-39, para 9)*
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> > *"9. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is, under the colour of office. Official duty, therefore, implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which, further, must have been official in nature. The section has, thus, to be construed strictly while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be*

given liberal and wide construction so far as its official nature is concerned. For instance, a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance, a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in the course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted."

36. In P.P.Unnikrishnan v. Puttiyottil Alikutty [P.P. Unnikrishnan v. Puttiyottil Alikutty, (2000) 8 SCC 131 : 2000 SCC (Cri) 1460] , law to the same effect as in the above decision has been reiterated. The police officers kept a person in lock-up for more than 24 hours without authority and subjected him to third-degree treatment. Thus, it was held that such offence was neither covered under Section 64(3) of the Kerala Police Act nor under Section 197(1) CrPC.

37. *In Satyavir Singh Rathi v. State [Satyavir Singh Rathi v. State, (2011) 6 SCC 1 : (2011) 2 SCC (Cri) 782] , this Court has referred to the decision in B. Saha case [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] and laid down that the question of sanction has to be seen with respect to the stage and material brought on record up to that stage. Whether allegation of misappropriation is true or false is not to be gone into at this stage in considering the question whether sanction for prosecution was or was not necessary. The criminal acts attributed to the accused were*

taken as alleged. This Court has observed as under : (Satyavir Singh Rathi case [Satyavir Singh Rathi v. State, (2011) 6 SCC 1 : (2011) 2 SCC (Cri) 782] , SCC pp. 41-44, paras 87-88 & 94)

> *"87. Both these judgments were followed in Atma Ram case [State of Maharashtra v. Atma Ram, AIR 1966 SC 1786 : 1966 Cri LJ 1498] where the question was as to whether the action of a police officer in beating and confining a person suspected of having stolen goods in his possession could be said to be under colour of duty. It was held as under : (AIR pp. 1787-88, para 3)*
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> > *'3. … The provisions of Sections 161 and 163 of the Criminal Procedure Code emphasise the fact that a police officer is prohibited from beating or confining persons with a view to induce them to make statements. In view of the statutory prohibition it cannot, possibly, be said that the acts complained of, in this case, are acts done by the respondents under the colour of their duty or authority. In our opinion, there is no connection, in this case between the acts complained of and the office of the respondents and the duties and obligations imposed on them by law. On the other hand, the alleged acts fall completely outside the scope of the duties of the respondents and they are not entitled, therefore, to the mantle of protection conferred by Section 161(1) of the Bombay Police Act.'*
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> *88. Similar views have been expressed in Bhanuprasad Hariprasad Dave case [Bhanuprasad Hariprasad Dave v. State of Gujarat, AIR 1968 SC 1323 : 1968 Cri LJ 1505] wherein the allegations against the police officer were of taking advantage of his position and attempting to coerce a person to give him bribe. The plea of colour of duty was negatived by this Court and it was observed as under : (AIR p. 1328, para 9)*

> *'9. … All that can be said in the present case is that the first appellant, a police officer, taking advantage of his position as a police officer and availing himself of the opportunity afforded by the letter Madhukanta handed over to him, coerced Ramanlal to pay illegal gratification to him. This cannot be said to have been done under colour of duty. The charge against the second appellant is that he aided the first appellant in his illegal activity.'*
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> ***

94. In B. Saha case [B. Saha v. M.S. Kochar, (1979) 4 SCC 177 : 1979 SCC (Cri) 939] this Court was dealing primarily with the question as to whether sanction under Section 197 CrPC was required where a Customs Officer had misappropriated the goods that he had seized and put them to his own use. While dealing with this submission, it was also observed as under : (SCC p. 184, para 14)

> *'14. Thus, the material brought on the record up to the stage when the question of want of sanction was raised by the appellants, contained a clear allegation against the appellants about the commission of an offence under Section 409 of the Penal Code. To elaborate, it was substantially alleged that the appellants had seized the goods and were holding them in trust in the discharge of their official duty, for being dealt with or disposed of in accordance with law, but in dishonest breach of that trust, they criminally misappropriated or converted those goods. Whether this allegation or charge is true or false, is not to be gone into at this stage. In considering the question whether sanction for prosecution was or was not necessary, these criminal acts attributed to the accused are to be taken as alleged.'"*
>
> *(emphasis in original)*

This Court has held that in case there is an act of beating a person suspected of a crime of confining him or sending him away in an injured condition, it cannot be said that police at that time were engaged in investigation and the acts were done or intended to be done under the provisions of law. Act of beating and confining a person illegally is outside the purview of the duties.

38. In Paramjit Kaur v. State of Punjab [Paramjit Kaur v. State of Punjab, (1996) 7 SCC 20 : 1996 SCC (Cri) 167] , this Court directed the Director, CBI to appoint an investigation team headed by a responsible officer to conduct investigation in the kidnapping and whereabouts of the human rights activist and also to appoint a high-powered team to investigate into the alleged human rights violations.

39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.

39.5. In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of court at a later stage, finding to that effect is permissible and such a plea can be taken first time before the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed.

39.7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place material during the course of trial for

> *showing what his duty was. The accused has the right to lead evidence in support of his case on merits.*
>
> *39.9. In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.*

20. In afore case, Hon'ble Apex Court categorically held that public servant is not entitled to indulge in criminal activities. Though Mr. Anand Sharma, learned Senior Counsel for the accused, placed heavy reliance upon the judgment passed by Hon'ble High Court of Orissa at Cuttack in case titled as ***Ajaya Kumar Barik Versus. State of Odisha and Another, 2022 LiveLaw (Ori) 154,*** but perusal of same clearly reveals that afore judgment is based upon judgment passed by Hon'ble Apex Court in ***D.Devaraja*** (supra), wherein it has been held that if the act complained of has any nexus with the official duty, in that case, the public servant cannot be subjected to prosecution without sanction of the Government. Though there cannot be any quarrel with the aforesaid proposition of law laid down by Hon'ble High Court of Orissa at Cuttack, but as has been discussed hereinabove, Hon'ble Apex Court in ***Satyabrata Lenka*** (supra), has categorically held that before taking cognizance of the offence against public servant enquiry has to be conducted to ascertain as to whether the person, against whom the complaint has been filed, discharged

the official duty at the time of alleged incident. Since in the instant case, it has come in the inquiry conducted by the DIG (CID) that no police officer has the authority to call, thrash and harass the informer and implicate him in false case as it amounts to misconduct, alleged acts of giving beating and illegal detention of the complainant at the hands of accused cannot be said to in discharge of public function. If it is so, there is/was no requirement, if any, to obtain sanction under Section 197 Cr.P.C.

21. Though Mr. Anand Sharma, learned Senior Counsel representing the accused, attempted to argue that present petition under Section 482 Cr.P.C is not maintainable, but this Court is not persuaded to agree with Mr. Sharma, learned Senior Counsel for the accused that since second criminal revision is not maintainable against the order passed by learned Additional Sessions Judge, while exercising jurisdiction under Section 390 Cr.P.C., complainant had no option but to invoke the jurisdiction of this Court under Section 482 Cr.P.C., which empowers this Court to prevent abuse of the process of law and pass orders to secure the ends of justice, including prevention of miscarriage of justice. Moreover, Hon'ble Apex Court in ***D.Devaraja*** (supra), while dealing with a matter concerning sanction held and observed that an application under Section 482 Cr.P.C. is maintainable to quash proceedings which are ex facie bad for want of

sanction, frivolous or in abuse of process of court. Since under Section 482 Cr.P.C., this Court is competent to quash proceedings which are ex facie bad for want of sanction, frivolous or in abuse of process of Court, this Court, while exercising the same power under Section 482 Cr.P.C, can also look into the correctness of the order passed by Courts below, thereby discharging the accused for want of prosecution under Section 197 Cr.P.C. Though Hon'ble Apex Court in ***D.Devaraja*** (supra) held that if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if he has exceeded the scope of his powers and/or acted beyond the four corners of law, but facts in the case are somewhat different. In the case at hand, complainant, who was an informer and had apprised police with regard to alleged act of beatings being given to one person by four persons, was not only given beatings, but illegally detained for few hours by the accused, who though had definite knowledge with regard to correctness of information furnished by the complainant as is evident from the findings returned by the Inquiry Officer in inquiry report, but yet for extraneous reasons without there being any cogent and convincing evidence accused not only gave beatings to the complainant, but illegally detained him and thereafter, harassed him by filing a false kalendra for furnishing false

information. It is not a case, where accused can be said have acted in discharge of official duty.

22. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court finds merit in the present petition and accordingly, the same is allowed. Impugned order dated 31.08.2018 is quashed and set aside. Learned trial Court is directed to proceed with the matter and decide the same in accordance with law.

(Sandeep Sharma),
Judge

April 27, 2026
(sunil)