



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 1463/2016

1. Rakesh Mandola S/o Sh. Narayan Prasad Inspector Central Customs Department, Jodhpur, R/o Mahaveer Colony, Ratanada, Jodhpur
2. Rakesh Chandra S/o Sh. Giriraj Prasad Dhakar, At Present Inspector Central Customs Department, Jodhpur, R/o Panchwati Colony, Jodhpur

-----Petitioners

Versus

1. State Of Rajasthan
2. Rameshwar Lal S/o Sh. Muni Lal Ji Soni, R/o Sunaraon Ka Baas, Shahpura, New School, Jodhpur

-----Respondents

For Petitioner(s) : Mr. Nishant Bora
For Respondent(s) : Mr. Hanuman Prajapati, PP
Mr. Abhishek Purohit

HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Order

REPORTABLE 14/02/2025

Instant criminal revision petition has been filed under Section 397 /401 Cr.P.C against the order dated 23.11.2016 passed by the learned Additional Sessions Judge No.4, Jodhpur Metropolitan in Sessions Case No. 182/2012 whereby, the learned Judge ordered to frame charges against the petitioners for offences under Sections 323, 325, 330, 331 IPC.

Brief facts of the case are that a written report was filed by the complainant Rameshwar Lal Soni stating therein that on 18.05.1988 when he was on leave, his residential house was raided by customs officers, however, they could not find any objectionable material. Thereafter, on 03.06.1988, he was



apprehended by Inspector Dhakar and Mr. Mandola of Customs Department and taken to customs office where they inflicted injuries and threatened him.

On this report, the police registered a case and started investigation. After due investigation, the police filed negative Final report in the case. The complainant filed a protest petition in which the statement of complainant and witnesses were recorded under Section 200 and 202 Cr.P.C. and the trial court took cognizance against the accused petitioners. The petitioners filed an application under Section 197 Cr.P.C. stating therein that since the alleged offence has been committed by the petitioners who are public servants in discharge of his official duty, therefore, cognizance could not be taken against them unless a sanction has been accorded by the appropriate government. The said application came to be dismissed by the trial court vide order dated 09.11.1994.

The petitioners thereafter filed a revision petition before this Court being S.B. Criminal Revision Petition No. 382/1994. However, the said revision petition came to be dismissed as withdrawn with the liberty to raise all the objections before the trial court at the time of framing of charges. Subsequently, the learned trial court after hearing the arguments on charge, proceeded to frame charges against the petitioners vide impugned order dated 23.11.2016. Hence, this present revision petition.

Learned counsel for the petitioners argued that Section 197 of the Code creates an absolute bar in case of prosecution of a public servant. The said provision prohibits the Court from taking a cognizance of such offence that has been committed by a public



servant in discharge of his official duty unless a sanction has been accorded by the appropriate government. The petitioners allegedly committed the "offence" during the course of discharging their official duty and therefore, the issue of sanction has to be considered at the time of framing of charges. However, the learned trial court while misinterpreting the provisions of Section 197 Cr.P.C. held that the act done by the petitioners does not fall within the mandate of Section 197 Cr.P.C. The allegation against the petitioners is that they took complainant to the customs office where he was interrogated by use of force. Therefore, the alleged acts were done in discharge of their duties as public servant, therefore, they are entitled to get protection of Section 197 Cr.P.C. Therefore, the impugned order dated 23.11.2016 is illegal and same is liable to be set aside. Learned counsel for the petitioner placed reliance on the decision of Hon'ble Apex Court in the case of D.T. Virupakshappa Vs. C. Subash reported in AIR 2015 SC 2022, judgment of this Court in the case of Mohan Lal Lathar Vs. State & Anr. (S.B. Criminal Revision petition No. 32/2015) dated 27.04.2016 and Naresh Kumar Vs. State & Anr (S.B. Criminal Misc. petition No. 150/2013) decided on 22.08.2017.

Per contra, learned Public Prosecutor and learned counsel for the complainant argued that offence under Sections 323, 325, 330, 331 IPC is prima facie made out against the accused petitioners and acts done by the petitioners cannot be said to be in discharge of official duty and same would not be protected by the armor of Section 197 of the Code. It is further argued that the point about sanction need not have been considered at the stage



of framing of charges. At this stage the Court should only see if a "prima facie" case is made out or not. Thus, it is prayed that no interference is called for in the impugned order dated 23.11.2016 and the revision petition is liable to be dismissed.

I have heard learned counsel for the parties and perused the impugned order.

In order to appreciate the controversy, it would be apt to refer to 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 office 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, 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 the State, of the State Government:

Provided.... "

Sanction of the Government, to prosecute a public officer, for any act related to the discharge of official duty, is imperative to protect the public officer from facing harassive, retaliatory, revengeful, and frivolous proceedings. The requirement of sanction from the government, to prosecute would give an upright



public officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure Protection. The protection of this provision is available only if three conditions are fulfilled; the accused is (a) a public servant, (b) has allegedly committed an offence, (c) while acting or purporting or in connection to act in the discharge of his official duty. In case these three conditions are fulfilled, then the Court is prevented from taking cognizance of the offence unless the appropriate government grants a sanction against the alleged accused.

Admittedly, the petitioners were acting as customs officers at the time of the incident, and the complainant was allegedly subjected to assault within the customs office while the petitioners were discharging their official duties. While it is clear that the petitioners may have exceeded their powers by beating and torturing the complainant to extract the truth, this cannot be construed as an act entirely disconnected from their official duty. Even though the petitioners acted in excess of their duty, such actions were still within the broader context of their official responsibilities. This excess of power does not negate the protection granted under Section 197 of the Cr.P.C., as the offense remains connected to their official duties. Therefore, such excess should not serve as a basis to deny the public servants the protection afforded by the statute unless sanction for prosecution is granted by the State. The nature of the offense plays a pivotal role in determining whether Section 197 applies, particularly when the offense arises from actions reasonably connected to the



discharge of official duties, such as abuse of power or excess use of authority. In light of this, the necessity for prior sanction is further underscored, and it is evident that the trial court erred in framing charges against the petitioners without obtaining the required sanction.

In the case of **State of H.P. v. M.P. Gupta** reported in **(2004) 2 SCC 349**, the Hon'ble Supreme Court had an occasion to discuss the scope and ambit of Section 197 of the Code. The Apex Court held as under:

"The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution."

Hon'ble Apex Court in the case of **Sankaran Moitra Vs. Sadhna Das and Ors.** reported in **(2006) 4 SCC 584** has observed as under: -

"The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or



purported performance of duty Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of learned Counsel for the complainant that this is an eminently fit case for grant of such sanction. 18. We thus allow this appeal and setting aside the order of the High Court quash the complaint only on the ground of want of sanction under Section 197(1) of the Code of Criminal Procedure. The observations herein, however, shall not prejudice the rights of the complainant in any





prosecution after the requirements of Section 197(1) of the Code of Criminal Procedure are complied with."

The Hon'ble Supreme Court in case of **State of Orissa Vs. Ganesh Chandra Jew** reported in **(2004) 8 SCC 40**, which reads as under:-



"7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been



committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty."

Hon'ble Supreme Court in the case of **Om Prakash & others Vs. State of Jharkhand** reported in **(2012) 12 SCC 72**, which reads as under :-

"36.....The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection....."

Hon'ble Supreme Court in the case of **D.T. Virupakshappa** (Supra) the Hon'ble Apex Court has observed as under:-

"7. In the case before us, the allegation is that the Appellant exceeded in exercising his power during investigation of a criminal case and assaulted the Respondent in order to extract some information with regard to the death of one Sannamma, and in that connection, the Respondent was detained in



the police station for some time. Therefore, the alleged conduct has an essential connection with the discharge of the official duty. Under Section 197 of Code of Criminal Procedure, in case, the Government servant accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, the previous sanction is necessary.

8. The issue of 'police excess' during investigation and requirement of sanction for prosecution in that regard, was also the subject matter of State of Orissa through Kumar Raghvendra Singh and Ors. v. Ganesh Chandra Jew MANU/SC/0264/2004 : (2004) 8 SCC 40, wherein, at paragraph-7, it has been held as follows:

7. The protection given Under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the



alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty....

(Emphasis supplied)

9. In *Om Prakash* (supra), this Court, after referring to various decisions, particularly pertaining to the police excess, summed-up the guidelines at paragraph-32, which reads as follows:

32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (*K. Satwant Singh*). The protection given Under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be



a sufficient ground to deprive the public servant of the protection (Ganesh Chandra Jew). If the above tests are applied to the facts of the present case, the police must get protection given Under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted Under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood.

(Emphasis supplied)

10. In our view, the above guidelines squarely apply in the case of the Appellant herein. Going by the factual matrix, it is evident that the whole allegation is on police excess in connection with the investigation of a criminal case. The said offensive conduct is reasonably connected with the performance of the official duty of the Appellant. Therefore, the learned Magistrate could not have taken cognizance of the case without the previous sanction of the State Government. The High Court missed this crucial point in the impugned order."

This Court, looking into the statutory requirement as laid down in Section 197 Cr.P.C. and the precedent laws of the Hon'ble Apex Court is clear that any action taken in good faith by the Government officer in discharging of duties or performing their duties in good faith and intended to be done in pursuance of the law then no suit, prosecution or any other legal proceeding shall lie against the State Government or any officer of the these Government or any other person exercising any powers of discharging such functions without prior prosecution sanction. Therefore, this Court is of the opinion that Section 197 Cr.P.C.



applies in the present case, and the trial court has committed an error in framing charges against the petitioners without acquiring the sanction to prosecute them.

Accordingly, the present revision petition is hereby allowed.

The impugned order dated 23.11.2016 passed by the learned Additional Sessions Judge No.4, Jodhpur Metropolitan in Sessions Case No. 182/2012 is hereby quashed and set aside and the petitioners are discharged from the offence under Sections 323, 325, 330, 331 IPC.

Stay petition is disposed of.

Record of the trial court be sent back forthwith.

(MANOJ KUMAR GARG),J

104-BJSH/-