IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3711-2013 (O&M)
Reserved on : 26.05.2025
Date of Pronouncement : 01.07.2025

Satish Kumar

... Petitioner

Versus

Krishan Kumar and others

.. Respondents

CORAM : HON'BLE MR. JUSTICE H.S.GREWAL

Present:- Mr. Rajvinder Singh Bains, Senior Advocate (through VC) with
Mr. Inderpal Singh Deol, Advocate for the petitioner.

Ms. Praak Sheoran, Advocate and
Mr. Sanjay Verma, Advocate for the respondents.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

***

H.S. Grewal, J.

The instant revision petition has been filed under Section 401 Cr.P.C. against the order dated 08.10.2013 passed by the learned Additional Sessions Judge, Faridabad, whereby, the summoning order passed by the learned Judicial Magistrate 1st Class, Faridabad dated 12.11.2012 (Annexure P-2) against the respondents had been set aside.

2. Learned Senior counsel for the petitioner has contended that the Revisional Court has erred in setting aside the summoning order passed against the respondents inasmuch as it had been proved on record that the State machinery had been misused and the respondents/police officials had

malafidely lodged FIR No.565 dated 18.08.2001, under Sections 384, 420, 190, 191 and 192 IPC against the petitioner. He also contended that the mandatory provision of Section 197 Cr.P.C. is not a prerequisite to prosecute a public servant. In support of his submissions, he has relied upon the judgments of Hon'ble the Supreme Court in the cases of **Fakhruzamma vs. State of Jharkhand and another, (2014) 1 RLW(SC)166, Japani Sahoo vs. Chandra Shekhar Mohanty, AIR 2007 SC 2762** and **Nagraj vs. State of Mysore, (1964) AIR (SC) 269.**

3. On the other hand, learned counsel for the respondents has contended that the Revisional Court was right in setting aside the summoning order against the respondents due to absence of sanction as required under Section 197 of Cr.P.C. He further submitted that the Revisional Court was also right in holding that the alleged act of the respondents had a clear nexus with the purported discharge of their official duties and in the absence of sanction under Section 197 Cr.P.C., the complaint could not be filed nor cognizance thereof, could be taken. He also submitted that the petitioner, who is habitual in filing false complaints, had concealed the fact of filing two petitions before this Court and also the decision of the Civil Court in suit No.RBT 450 of 2006 which was dismissed with costs against him.

4. I have taken into account the submissions of the learned counsel for the parties and perused the material available on record.

5. The brief facts of the case are that the petitioner had filed a complaint under Sections 364, 452, 469, 471, 166, 167, 192, 195, 211, 323,

343, 384, 409, 427 and 120-B of IPC against the respondents and other police officials on the grounds that he is the owner, editor and publisher of Daily Newspaper namely "Mazdoor Morcha" which is published at Faridabad. Due to this fearless and impartial publication of news, he had suffered harassment and numerous false criminal cases at the instance of highly placed persons such as DGP, Haryana were filed which were later on found to be false and resulting in cancellation of FIRs. Because of publication of newspaper mentioned above and in discharge of onerous duties as an Editor, he associated with number of labour movements, social commitments etc. and had been engaged in public reforms and therefore, the people in every circle eagerly await for newspaper of the complainant. It was pleaded that in pursuance of the policy of bringing the doings of High ups to light, he after careful verification and confirmation of the facts published news item as a matter of true facts about Ranbir Singh, ASP, Faridabad and he had also filed two criminal complaints under Sections 500, 501, 502 of IPC against SSP, Faridabad. Having been irritated by the publication of the said news items, the then SSP, Faridabad hatched a conspiracy with the help of other respondents to eliminate him and on 18.08.2001 at about 7:30 AM when he was sitting in his house, the accused/respondents in civil dress namely SI Krishan Kumar, HC Bhim Singh, Bijender Singh alias Kamando, Constable Khem Chand alias Khemi and one another police man who were serving under the SSP, Faridabad, had illegally entered into the house of complainant and 5th accused/respondent was sitting in the car. They, without mincing anything, had abducted the

petitioner/complainant forcibly by dragging, beating and put him into an unnumbered white coloured Maruti Zen Car. At that time the father, mother and a seven year old son of the complainant were present in the house. The complainant raised alarm but accused persons/respondents abducted the complainant forcibly. Thereafter, the complainant was taken to CIA Police Post, Badarpur Border, Faridabad and they forcibly made him to sit down in a room without his consent by use of force and criminal intimidation. The petitioner/complainant had repeatedly enquired that for what offence he had been detained but none of the respondents told him anything. In the meantime, father of complainant namely Niranjan Singh made a telephone call to SSP, Faridabad and also sent telegram to the higher authorities regarding the abduction of his son. The news of abduction of the complainant rapidly spread in the city Faridabad and the same was published in the evening newspapers Rajpath "Patrakar Satish Ka Apaharan, Safed Zen me 5 log din dahade utha kar le gaye". Sandhya Tara evening newspaper had also published the said news "Sampadak Ka Din Dahare Apaharan". People gathered at many places and demonstrated before the Deputy Commissioner, Faridabad. The President of Bar Association, Faridabad Mr. Om Parkash Sharma had also sent a resolution to the higher authorities. He also went to the Police Station Central to lodge the report of abduction. The respondents seeing the situation and pressure of the people could not succeed in their illegal designs and they changed their idea and they lodged a false anti-time FIR vide FIR No. 565 dated 18.08.2001 against him in the Police Station Central, Faridabad only to legalize the

abduction matter in collusion with accused No. 8 Mahender Singh, Estate Officer, HUDA, Faridabad, who was also a part of the conspiracy with the accused/respondents. The signatures of the petitioner/complainant were obtained forcibly on some blank papers and he was produced before the Illaqa Magistrate at about 9:00 PM at his residence and only then, he came to know that he had been falsely implicated in FIR No. 565 dated 18.08.2001, under Sections 384, 420, 190, 191, 192 of IPC, registered at Police Station Central, Faridabad. He had also approached the authorities for impartial enquiry of this case and for taking action against the guilty police officials but nothing had been done and therefore, he had preferred the instant complaint to summon the respondents for an offence under Sections 364, 452, 469, 471, 166, 167, 192, 195, 211, 323, 343, 384, 409, 427 & 120-B IPC.

6. The learned Judicial Magistrate 1st Class, Faridabad, vide its order dated 12.11.2012 (Annexure P-2), had summoned the respondents for the offence punishable under Sections 167, 192, 195, 211, 323, 343, 384, 409, 364, 452, 469 & 471 IPC while holding that a conspiracy had been hatched against the complainant and he had been falsely implicated in the aforesaid FIR. It was also recorded that it is a case of flagrant misuse of state machinery and executive power warranting proceedings against the accused/respondents. The relevant extract of the order is reproduced hereunder:-

> *"5. Complainant has alleged highhandedness at the part of police alleging that without any case pending against him he was forcibly abducted from his house and was detained for the whole day. He further claims that everything happened upon the directions of the*

then SP and accused no. 7 Ranbir Sharma, who hatched a conspiracy against him, in view of the fact that complainant had published news items and articles alleging corruption by him during his tenure. The incident as alleged to have happened has been consistently deposed by all the witnesses. Documents Ex. C3 to Ex. C15, Ex. PW6/A, point out that the incident had been reported by father of complainant with commendable promptitude leaving no doubts in mind that there has been no concoction or afterthought. The happening of incident is further strengthened from the fact that on the same very day a resolution was passed by Bar Association Faridabad, condemning the incident. The allegations made by complainant that he was falsely implicated in case/FIR dated 18.08.2001 further derive credence from the fact that the information upon which the FIR has been allegedly lodged was received at the police station at about 3 AM in the morning, and which finds no place in the records of concerned department as per the testimony of CW8. It being a case of flagrant misuse of state machinery and executive power, certainly there are sufficient grounds to proceed against the accused no.1 to 4 and 6 to 8 for commission of offences punishable under Sections 167, 192, 195, 211, 323, 343, 384, 409, 364, 452, 469 and 471 of IPC. The accused persons be summoned for 11.05.2013 upon necessary compliance."

7. Feeling aggrieved against the summoning order dated 12.11.2012 (Annexure P-2) passed by the JMIC, Faridabad, the respondents had approached the Revisional Court by filing Criminal Revision No.48, instituted on 07.05.2013, which was allowed vide the impugned order dated 08.10.2013 by observing that the complainant/petitioner had made several complaints to the higher officers of the Police Department which were rejected and critically,

the complainant had failed to obtain any sanction from the competent authority to prosecute the respondents, which is mandatory under Section 197 Cr.P.C. It was also held that the trial Court's summoning order was non-speaking and lacked reference to particular facts and therefore, no offence is made out against any of the respondents without the requisite sanction. The relevant extract thereof is reproduced hereunder:-

> *"11. From the evidence it reveals that respondent/complainant made several complaints to higher officers of the Police Department to various Central and State Government authorities and other higher authorities but every where his complaint was rejected. It further reveals that respondent/complainant nowhere attempted to obtain any sanction from the competent authority for the purpose of prosecution of the present revisionists in any manner as required under Section 197 Cr.P.C.*
>
> *xxxxxxxxxx*
>
> *Thus, the impugned complaint could not have been launched against the revisionists or at the most cognizance could not have been taken or the summoning orders could not have been issued against the revisionists. By the language of Section 197 it is clear that no Court can take cognizance of an offence alleged to have been committed by any person belonging to the category mentioned in the section when he is an accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. It is not every offence committed by a public servant which requires sanction for the prosecution under Section 197(1) of the Criminal Procedure Code nor even every act done by him while he was actually engaged in the performance of the official duty. But if the act complained of was directly concerned with his official duty so that if questioned,*

it could be claimed to have been done by virtue of the office, then sanction, would be necessary. If there is inherent nexus between the act complained of as an offence and the duty of the public servant, sanction becomes necessary even if act complained of is in excess of the duty of the public servant. A public servant can only be said to act or to purport to act in the discharge of his official duty if his act is such as to lie within the scope of his official duty. From the impugned order it reveals that the learned JMIC was pleased to summon all the revisionists/accused only on the ground of high headedness of the policemen. Thus, no ingredients of any offence can be found out against any of the revisionists/accused. In the complaint, respondent/complainant has not alleged about any malafide action in the impugned complaint case by any of the revisionist/accused while discharging their official duty despite the fact that complainant has been taking the ground of mala fide action of revisionist in FIR No. 565 dated 18.08.2001 under Section 384/420/100/101/192 of IPC, Police Station Central on the complaint of Mahinder Singh Yadav, Faridabad in which he was arrested and subsequently released on bail. Complainant/respondent was duly arrested in this case by police and there is no illegal act in this regard and hence revisionist fined protection of Section 197 Cr. P.C. Moreover, no offence is made out against any of the revisionists/accused and the impugned order as well as the criminal complaint deserves to be dismissed.

12. Keeping in view the totality of facts and circumstances the impugned order is not only non-speaking but lacks reference to particular facts, evidence and other circumstances in relation to particular offences. The order cannot be said to be valid in the eyes of law. The impugned order lacks appreciation of facts,

evidence brought on record as also analysis and appraisal thereof. This order is no order in the eyes of law.

13. In view of foregoing discussion, present revision petition is allowed and order passed by Learned Trial Court dated 12.11.2012 whereby revisionists were ordered to be summoned is hereby set aside and complaint qua revisionists stands dismissed."

8. Now, the instant revision petition has been preferred by the petitioner/complainant challenging the order dated 08.10.2013 passed by the Revisional Court merely on the ground that non-compliance of provision under Section 197 Cr.P.C. is not a sufficient ground to discharge the respondents, who are stated to be performing their official duties.

9. In order to deal with the legal propositions, it would be appropriate to consider Section 197 Cr.P.C. which provides for sanction of prosecution of certain public servants and the relevant part thereof reads thus ::-

*"**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 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]-"

(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.]*

10. So far as, the law relating to sanction for prosecution is concerned, the various judgments of the Hon'ble Apex Court as also this Court are categoric to the effect that cognizance of an offence cannot be taken without their being prior prosecution sanction under Section 197 Cr.P.C., where the official/officer concerned has acted in the discharge of his official duties. Hon'ble the Supreme Court in the case of ***'State of Orissa Through Kumar Raghvendra Singh & others Vs. Ganesh Chandra Jew, 2004(2) RCR (Criminal) 663*** has held as under:-

> *"9. So far public servants are concerned the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make*

it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint, cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty.

10. xxxxxxx

11. 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 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 course of service. Its operation has to be limited to those duties which are discharged in 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 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 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 course of service but not in discharge of his duty and without any justification therefore then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in ***Matajog Dobey v. H.C. Bhari (AIR 1956 Supreme Court 44)*** *thus :*

> *"The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty. There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."*

12. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to official to which applicability of Section 197 of the Code cannot be disputed."

11. The judgments relied upon by the learned counsel for the petitioner are distinguishable on facts and are not applicable to the instant revision petition as they do not negate the fundamental requirement of sanction when the acts are performed under the color of official duty.

12. A perusal of the relevant provisions of law as also the aforementioned judgment clearly demonstrates that if the accused had acted in

the discharge of their official duties, they are entitled to the protection accorded under Section 197 Cr.P.C. The Revisional Court has rightly set aside the order of cognizance on the ground that no prior sanction under Section 197 Cr.P.C. was obtained which is a mandatory precondition for prosecuting public servants for acts alleged to have been committed in discharge of their official duties. While the petitioner alleged *malafide* actions, the acts of arrest, detention, and registration of an FIR, even if wrongful, fall within the general scope of police duties, thereby necessitating sanction.

13. Furthermore, it was brought to the Court's attention that the complainant had filed multiple complaints over the years, subjecting the officials to protracted litigation for over 13 years, resulting in severe mental and reputational agony. Some of the officials have since retired, while others have unfortunately passed away and to allow the prosecution to continue at this stage would serve no fruitful purpose and would instead amount to abuse of process of law.

14. It is also important to note that the complainant/petitioner, being associated with the press, appears to have been motivated by personal gain and publicity, potentially using the complaints and proceedings as a tool to sensationalize the matter for media attention, rather than to seek genuine redressal. Every police official, like any other citizen, is entitled to dignity, presumption of innocence and a fair process. Allowing the matter to proceed further under these circumstances would not only be contrary to the principles of natural justice but would also result in undue harassment and injustice.

15. Therefore, keeping in view the interest of justice, equity, and fair play, this Court is in agreement with the findings recorded by the learned Additional Sessions Judge, Faridabad in the impugned order dated 08.10.2013, setting aside the summoning order against the respondents and the instant revision petition is hereby dismissed.

16. Pending application(s), if any, shall stand disposed of accordingly.

(H.S.GREWAL)
JUDGE

01.07.2025
A.Kaundal

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No