

AFR

Reserved on 17.12.2021

Delivered on 10.01.2022

Court No. 7

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**Case :- APPLICATION U/S 482 No. - 15266 of 2007**

**Applicant :-** Mahendra Pal Singh Lekhpal And Another

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Sushant Mishra

**Counsel for Opposite Party :-** Govt. Advocate,Smt. Usha Srivastava,V.K. Srivastava

**Hon'ble Chandra Kumar Rai,J.**

1. The instant application under Section 482 Cr.P.C. has been filed to quash the summoning order dated 14.03.2007 for demarcation.2007 passed by Judicial Magistrate IIIrd, Room No.12 Farrukhabad in complaint case No.28 of 2006 (Sya Ram Vs. Mahendra Pal and others).

2. The brief facts of the case are that applicant No.1 is a Lekhpal in the Consolidation department and applicant No.2 is a Kanoongo in the Consolidation department and both are the public servants. During consolidation proceedings, a joint plot was allotted to opposite party No.2 and one Ram Singh. Opposite party No.2 filed an application on 28.08.2006 before Settlement Officer of Consolidation for making measurement of plot No. 372. The Settlement of Consolidation Officer by order dated 29.08.2006 directed the Consolidation Officer to make measurement in accordance with law.

3. In pursuance of the order of Settlement Officer of Consolidation dated 29.08.2006, necessary reports were submitted by Consolidation authorities and applicant Nos. 1 and 2 on 15.11.2006 conducted

measurement of disputed plots with the help of local police and submitted their report

before the Assistant Consolidation Officer. The report dated 15.11.2006 has been annexed as Annexure No.2 to the affidavit accompanying with the present application, in which it is mentioned that measurement has been taken place taking due care of the crop standing in the disputed plot. Opposite party No.2 filed a complaint on 27.11.2006 before the Judicial Magistrate, Farrukhabad with the allegation that applicant Nos.1 and 2 have illegally made measurements of the plot, in which crops were standing and there was an order dated 15.11.2006 to stop the measurement,<sup>2</sup> the<sup>2</sup> copy of the complaint has been annexed as Annexure No.3 and order dated 15.11.2006 has been annexed as Annexure No.4 to the affidavit. The Judicial Magistrate IIIrd, Room No.12, Farrukhabad by order dated 14.03.2007 summoned the applicant under Section 427 IPC, without considering the facts that applicants are public servant and they were discharging their official duties.

4. This case was listed on 10<sup>th</sup> July, 2007 and following order was passed on that date:

*“Heard the learned counsel for the applicants and the learned A.G.A.*

*It is contended by the learned counsel for the applicants are the lekhpal and Kanoono respectively. They have made measurement of the land on the basis of the order passed by the C.O. concerned. They have discharged their duties and the allegations against them are false and frivolous.*

*Issue notice to O.P. No.2 returnable within four weeks.*

*In view of the facts and circumstances, further proceedings of complaint case No.28 of 2006 pending in the Court of Judicial Magistrate, III Room No.12*

*Farrukhabad, shall remain stayed till the next date of listing.*

*List after four weeks"*

5. In pursuance of the order dated 10.07.2007, opposite party No.2 appeared through counsel before this court and filed his counter affidavit.

6. Heard Mr. Sushant Mishra, learned counsel for the applicants and Dr. Hridayawati Mishra, learned A.G.A. for State.

7. Nobody appeared on behalf of the opposite party No.2

8. The learned counsel for the applicants argued that applicant Nos.1 and 2 are public servants and they were discharging their duties to measure the plots, as such the private complaint against the applicants are not maintainable unless necessary sanction as provided under Section 197 of Code of Criminal Procedure is obtained. It is further argued that applicants were not aware about the further order passed by the Settlement Officer Consolidation to stop the measurement. It is further argued that applicants have retired during pendency of the case before this Hon'ble Court, so their case may be considered sympathetically.

9. On the other hand, learned A.G.A. has submitted that the applicants should appear before the Magistrate in pursuance of summoning order dated 14.03.2007 and take whatever defence they want, therefore, no interference is required and application is liable to be dismissed.

10. Learned counsel for the opposite party No.2 although is not present, but I have perused the counter affidavit filed by him, in which it has been stated that no ground for interference under Section 482 Cr.P.C. is made out against the summoning order dated 14.03.2007 and the application under Section 482 Cr.P.C. is liable to be dismissed.

11. There is no dispute about the fact that applicants are public servants and further they were discharging their official duties, as such the arguments advanced by the learned counsel for the applicants that private complaint against the public servant for want of sanction would vitiate criminal proceeding has got substance.

12. To effectively adjudicate the issue raised in this case, it is necessary to examine the scope and effect of Section 197 of the Criminal Procedure Code. Section 197 of Criminal Procedure Code is as follows:

*"Section 197 in The Code Of Criminal Procedure, 1973*

*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, 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: <sup>1</sup> 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.*

*(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.*

*(3A) <sup>1</sup> 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.*

(3B) *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.]*

(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 trial is to be held.”*

13. The object of sanction for prosecution whether under Section 197 of the code of criminal procedure is to protect a public servant discharging official duties and functions from harassment by initiation of frivolous criminal proceeding.

14. The Hon'ble Supreme court in a case of **Matajog Dubey vs. H. C. Bhari AIR 1956 SC 44** has held:

*“....Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard.....There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction....”*

15. In **Pukhraj vs. State of Rajasthan and another (1973 2 SCC 701)**, the Hon'ble Supreme Court has held:

*“2.....While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person, who ostensibly acts in execution of his duty still purports so to act, although he may have a*

*dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public officer, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purporting to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the ‘capacity in which the act is performed’, ‘cloak of offence’ and ‘professed exercise of the office’ may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty.....”*

16. Every offence committed by different officer does not attract section 197 of the Code of Criminal Procedure. The protection given under Section 197 of the Criminal Procedure Code has its' limitation. The protection is available only when alleged act done by the public servant is reasonably connected with the discharge of his official duty, an offence committed outside the scope of the duty of the public servant would certainly not require sanction. If in doing official duty public officer if committed any mistake or has been summoned in excess of duty even then the sanction of the Government as provided under Section 197 of the Criminal Procedure Code is mandatory.

17. On the question of the stage at which trial court has to examine whether sanction has been obtained and if not whether the criminal

proceedings should be nipped in the bud, there are decisions of Apex Court.

18. On the point of stage at which trial court has to examine sanction question Hon'ble Supreme Court in **D.T. Virupakshappa Vs. C. Subash, AIR 2015 12 SCC 231** has held that High court had erred in not setting aside an order of trial court taking cognizance of a complaint in exercise of power under Section 482 Cr.P.C.

19. The Hon'ble Supreme Court in the case of **D. Devaraja vs. Owais Sabeer Hussain reported in [2020 (113) ACC and 904]** has held that if the sanction as provided under Section 197 of Criminal Procedure Code has not been taken, the order taking cognizance by the Magistrate will be illegal and the High Court should exercise the power under Section 482 Cr.P.C. to quash the proceeding which was bad for want of sanction.

20. On the basis of law laid down by Hon'ble Supreme Court as mentioned above, it is well settled that an application under Section 482 Cr.P.C. is maintainable to quash the proceedings, which are ex facie bad for want of sanction. If, on the face of complaint, the act alleged appears to have a reasonable relationship with official duty power under Section 482 Cr.P.C. would have to be exercised to quash the proceedings to prevent abuse of process of Court.

21. In view of the facts and circumstances stated above, I am of the view that learned Magistrate has illegally taken cognizance of the offence summoning the applicants under section 427 IPC, which is ex facie bad for want of sanction. The application under Section 482 Cr.P.C. is allowed. The summoning order dated 14.03.2007 passed by the Judicial Magistrate IIIrd Room No.12 Farrukhabad in complaint case No.28 of 2006 is set aside and complaint is also quashed for want of sanction in exercise of power under Section 482 Cr.P.C. No order as to costs.

Order dated: 10.01.2022  
PS