

**A.F.R.**

**Court No. - 10**

**Case :-** APPLICATION U/S 482 No. - 5776 of 2017

**Applicant :-** Ajeet Shukla And Ors.

**Opposite Party :-** The State Of U.P. Thru. Prin. Secy.Home Civil Sectt.And Ors

**Counsel for Applicant :-** Nadeem Murtaza

**Counsel for Opposite Party :-** Govt. Advocate,Ajit Shukla,Amrendra Nath Tripathi

**Hon'ble Dinesh Kumar Singh,J.**

1. By way of this application under Section 482 CrPC, the applicants have prayed for quashing of the order dated 19.08.2017 passed by the learned Sessions Judge, Court No. 5, Pratapgarh in Criminal Revision No.192 of 2016 (Visharjan Singh Yadav and others Vs. State of U.P. and others).

By means of the impugned order the learned Sessions Judge has dismissed the revision filed by the applicants against the order dated 12.01.2015 passed by the learned Chief Judicial Magistrate, Pratapgarh in Case No.732 of 2014 (Vidhyabhan Singh Vs. Visharjan Singh Yadav and others) and Case No.761 of 2014 (Indirakar Misra Vs. Visharjan Singh Yadav and others) whereby the applicants were summoned to face trial under Sections 323, 325, 379, 427, 452 and 506 IPC.

Further prayer has been made for quashing of the entire proceedings of Case No.732 of 2014 (Vidhyabhan Singh Vs. Visharjan Singh Yadav and others) and Case No.761 of 2014 (Indirakar Misra Vs. Visharjan Singh Yadav and others), pending in the Court of Additional Chief Judicial Magistrate, Pratapgarh.

2. On the date of incident i.e. 21.05.2014 all the applicants were posted in the District Police Pratapgarh. Applicant no. 1 was posted as Sub-Inspector at Police Station Kotwali Nagar, District Pratapgarh, applicant no. 2 was posted as Chowki In-charge at Police Station

Kotwali City, applicant no. 3 was posted as Additional Superintendent of Police, District Pratapgarh, while applicant no. 4 was posted as Circle Officer, City, District Pratapgarh.

3. District Court, Pratapgarh comes within the jurisdiction of Police Station Kotwali Nagar, District Pratapgarh.

4. On 21.05.2014, the police received an information through Dial-100 of Police Service that a conflict between advocates of the District Court, Pratapgarh and Pradeshik Armed Constabulary (for short 'PAC') personnel, deployed in the premises of Civil Courts, Pratapgarh, was taking place. Information was also given that a PAC personnel had fired upon one lawyer, who had sustained firearm injuries. Soon after receiving the information, to maintain peace and to prevent any further untoward incident, the applicants and many other police personnel rushed towards the Civil Courts compound Pratapgarh to control the situation and maintain peace. The advocates, present in the Courts compound, were highly agitated and, it appears that in the skirmishes, between the police personnel and the advocates, the applicants suffered injuries. The police also used mild force to control the situation and, it took almost entire day for the District Administration to control the situation and bring normalcy in the District Courts compound and city of Pratapgarh.

5. The respondent nos. 2 and 3 filed two complaints before the Chief Judicial Magistrate, Pratapgarh on 24.05.2014 against the applicants and 8-10 other police personnel, alleging therein that on 21.05.2014 the police personnel, named in the complaints, assaulted and abused the advocates. The advocates suffered injuries. The police personnel also damaged property of the advocates and snatched their mobile-phones etc.

6. After recording statement of the complainants under Section 200 CrPC and witness under Section 202 CrPC, the learned Chief Judicial

Magistrate, Pratapgarh vide order dated 15.07.2014 directed merging of both the complaints.

7. After merging of the two complaints, statement of Mr. Ramchandra Yadav was recorded under Section 202 CrPC on 04.08.2015 and statement of Mr. Anil Yadav was recorded under Section 202 CrPC on 30.08.2014. Learned Magistrate thereafter passed order, summoning the applicants vide order dated 12.01.2015 under Sections 323, 325, 379, 427, 452, 504 and 506 IPC.

8. Heard Nadeem Murtaza, learned counsel for the applicants, Mr. Amrendra Nath Tripathi, learned counsel for respondent nos. 2 and 3, as well as learned Additional Government Advocate, representing respondent no. 1-State.

9. On behalf of the applicants, it has been submitted that the applicants were discharging official/public duty when the alleged incident took place for which two complaints came to be filed and the applicants had been summoned as accused; mandatory provision of sanction by the competent authority under Section 197 Criminal Procedure Code, 1973 (for short 'CrPC') could not have been ignored by the learned Chief Judicial Magistrate before taking cognizance and summoning the applicants as accused; the information received on Dial-100 through Mr. Anvar Khan, Advocate was recorded in the G.D. dated 21.05.2014. In the G.D. dated 22.05.2014 the extract of incident was also recorded. The police personnel, after receiving information, which got recorded in the G.D., reached to the District Court to control the situation in discharge of their official/public duty.

10. On behalf of the applicants, it has also been submitted that if the police personnel, including the applicants, would not have reached at the Court's compound to control the situation, there would have been much more damage to lives and properties, which might have included public property as well; the impugned proceedings, in

absence of sanction by the competent authority for prosecution of the applicants, are non-est and, are liable to be quashed as the same are without jurisdiction.

11. On behalf of the applicants, it has also been submitted that the learned Magistrate has exceeded its jurisdiction to take cognizance and summon the applicants as there was no proper sanction by the competent authority.

12. On behalf of the respondents, it has been submitted that assaulting the lawyers, destroying their properties and taking away their cell-phones etc. cannot be said to be a part of official duty of the applicants. The offence committed by the applicants cannot be said to be a part of the official duty and, therefore, no sanction was required for prosecuting them for the offences committed by them and the same did not come within the performance of the public/official duty; the police personnel, including the applicants, reached to the Court's compound without prior permission from the District Judge and, therefore, their action was wholly illegal and not in performance of public/official duty. Their acts/crimes are not protected by the provision of Section 197 CrPC. It has been further submitted that the present application has no merit and is liable to be dismissed.

13. I have considered the submissions advanced by the learned counsel for the parties and gone through the record.

14. Section 197 in The Code of Criminal Procedure, 1973 is extracted herein below for convenience:-

**"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."*

Notification No. 1841 (3)/VI-538-71 dated 30th January, 1975 reads as under:

*"Grih Vibhag (Police), Anubhag-9, Notification No. 1841 (3)/VI-538-71, dated January 30, 1975:-*

*In exercise of the powers conferred by sub-section (3) of Section 197 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Governor is pleased to direct that the provisions of sub-section (2) of the aforesaid section shall apply to all members of the following forces of the State, charged with the maintenance of public order wherever they may be serving, namely :*

*(i) U.P. Police Force*

*(ii) U.P. Pradeshik Armed Constabulary"*

15. The object of sanction for prosecution under Section 197 CrPC is to protect the public servants discharging official/public functions from harassment by initiation of mala-fide/frivolous/retaliatory criminal proceedings. A Constitution Bench of the Supreme Court in the case of *Matajog Dobey Vs. H.C. Bhari, AIR 1956 SC 44*, delineating importance of sanction for prosecution of public servants held as under:-

*"15. The minor contentions may be disposed of at the outset. Even if there was anything sound and substantial in the constitutional point about the vires of Section 5(1) of the Act, we declined to go into it as it was not raised before the High Court or in the grounds of the petition for special leave to appeal. Article 14 does not render Section 197 of the Criminal Procedure Code ultra vires as the discrimination is based upon a rational classification. 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. It was argued that Section 197 of the Criminal Procedure Code vested an absolutely arbitrary power in the Government to grant or withhold sanction at their sweet-will and pleasure, and the legislature did not lay down or even indicate any guiding*

*principles to control the exercise of the discretion. 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. If the Government gives sanction against one public servant but declines to do so against another, then the government servant against whom sanction is given may possibly complain of discrimination. But the petitioners who are complainants cannot be heard to say so, for there is no discrimination as against any complainant. It has to be borne in mind that a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the government and not in a minor official. Further, we are not now concerned with any such question. We have merely to see whether the court could take cognisance of the case without previous sanction and for this purpose the court has to find out if the act complained against was committed by the accused while acting or purporting to act in the discharge of official duty. Once this is settled, the case proceeds or is thrown out. Whether sanction is to be accorded or not is a matter for the government to consider. The absolute power to accord or withhold sanction conferred on the government is irrelevant and foreign to the duty cast on the court, which is the ascertainment of the true nature of the act."*

16. The intention behind protection under Section 197 CrPC is to protect the public servant from being unnecessarily harassed by launching a criminal proceeding against him for an offence allegedly committed while performing official/public duty. If the offence is in respect of an act done or purported to be done in discharge of official/public duty, the public servant has protection under Section 197 CrPC. This protection under Section 197 CrPC has salutary object to prevent harassment of public servants and protect them from mala fide and motivated criminal prosecution. However, if the competent authority finds that the act of commission/omission done by public servant was not in performance of his public duty, he would sanction prosecution of the public servant.

17. In **1973 (2) SCC 701 (Pukhraj Vs. State of Rajasthan and another)** the Supreme Court has held that the requirement of sanction

cannot be confined to only such an act done or purporting to be done directly in discharge of his public office. This protection would be available in cases where the act complained of is in excess of the duty or under a mistaken belief as to the existence of such duty. Paragraph-2 of *Pukhraj Vs. State of Rajasthan and another* case (supra) is extracted hereinunder:-

*"2. The law regarding the circumstances under which sanction under Section 197 of the Code of Criminal Procedure is necessary is by now well settled as a result of the decisions from Hori Ram Singh's case [AIR 1939 FC 43 : 1939 FCR 159 : 40 Cri LJ 468] to the latest decision of this Court in Bhagwan Prasad Srivastava v. N.P. Misra [(1970) 2 SCC 56 : (1971) 1 SCR 317] . 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 office, 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 office" 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. In Hori Ram Singh case Sulaiman, J. observed:*

*“The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction.”*

*In the same case Varadachariar, J. observed: “there must be something in the nature of the act complained of that attaches it to the official character of the person doing it”. In affirming this view, the Judicial Committee of the Privy Council observed in Gill [AIR 1948 PC 128 : 1948 LR 75 IA 41 : 49 Cri LJ 503] case:*

*“A public servant can only be said to act or 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.... The test may well be whether the public servant, if challenged, can reasonably claim that, what he does in virtue of his office.”*

*In Matajog Dobey v. H.C. Bhari [AIR 1955 SC 44 : (1955) 2 SCR 925 : 1956 Cri LJ 140] the Court was of the view that the test laid down that it must be established that the act complained of was an official act unduly narrowed down the scope of the protection afforded by Section 197. After referring to the earlier cases the Court summed up the results as follows:*

*“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, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.”*

*Applying this test it is difficult to say that the acts complained of i.e. of kicking the complainant and of abusing him, could be said to have been done in the course of performance of the 2nd respondent's duty. At this stage all that we are concerned with is whether on the facts alleged in the complaint it could be said that what the 2nd respondent is alleged to have done could be said to be in purported exercise of his duty. Very clearly it is not. We must make it clear; however, that we express no opinion as to the truth or falsity of the allegations.”*

18. In **(2020) 7 SCC 695 (D. Devraja Vs. Owais Sabeer Hussain)** the Supreme Court, after making survey of the case law on the question of sanction in paragraphs-66, 67, 68, 69, 70 and 71 has held as under:-



**66.** *Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the Government, to prosecute would give an upright police 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, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate Government.*

**67.** *Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a policeman assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However, if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.*

**68.** *If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of the government sanction for initiation of criminal action against him.*

**69.** *The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.*

**70.** *To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of*

*sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.*

*71. If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate Government is obtained under Section 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act."*

19. It is also well settled that an application under Section 482 CrPC is maintainable to quash the proceedings for want of sanction or if same are frivolous or in abuse of process of the Court. If there is no reasonable relationship with the official/public duty the protection under Section 197 CrPC will not be available to such a public servant. However, for the alleged offence committed by the police personnel, which may be in excess of his official/public duty, without sanction the Court is barred to take cognizance of the offence. The judgment reported in *(1987) 4 SCC 663 (Bakhshish Singh Brar Vs. Gurmej Kaur and another)* relied on by Mr. Amrendra Nath Tripathi, learned counsel for the respondent nos. 2 and 3 is not applicable in the facts of the present case inasmuch as in the said case the police officer was accused of causing grievous injuries and death in conducting raid and search and, therefore, the Court held that where the police officer, while acting in purported discharge of official duty exceeded limits (underline supplied) of his official capacity, would be a question which can be decided after taking cognizance of offence and, therefore, held that the trial need not be stayed for want of sanction in the said case.

20. In the present case, it is not in dispute that there was unrest and the atmosphere was highly changed. The applicants, along with other police personnel, went to control the situation and maintain peace and order. The police officials also had suffered injuries to control the situation. To control the situation, if they had used force, and as a

result thereof, some lawyers had suffered injuries, it cannot be said that the police officers were not acting in discharge of their official duty. The question that the police personnel went there without permission of the District Court has no relevance inasmuch as the duty of the police is to maintain peace, law & order. It appears that there was an emergent situation to deal with by the police and, they could not have waited for the order to be passed by the District Judge to enter the Court premises. On this ground that there was no order passed by the District Judge for the police to enter the Court compound, the action taken by the police officials cannot be said to be not one towards discharge of the official/public duty. Even if the police official had exceeded to some extent their authority in discharge of their official/public duty, then also sanction would be required for their prosecution. In absence of sanction, the criminal proceedings against the applicants would be non-est and void and the same are liable to be quashed.

21. In view thereof, the application is hereby **allowed**. Consequently, the impugned proceedings are quashed.

**Order Date :- 10.8.2022**

MVS/-