HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 2146/2011

Dharamveer Singh S/o Shri Bhawani Singh R/o D-3, Dwarkapuri, R.P.A. Road, Jaipur

----Petitioner

Versus

1. State Of Rajasthan
2. Anda S/o Kishan Singh r/o Kanpura Surel Ka Badiya, Police Station Masooda, District Ajmer

----Respondents

For Petitioner(s)	:	Mr. A.K. Gupta, Sr. Adv. assisted by Mr. Saurabh Pratap Singh, Mr. Gaurav
For Respondent(s)	:	Mr. S.S. Mahla, PP

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

RESERVED ON **April 22th 2024**
PRONOUNCED ON **May, 08 ,2024**
BY THE COURT

REPORTABLE

1. In the present petition filed under Section 482 Cr.PC, the issue falls for consideration is, as to whether the cognizance for offences under Sections 323 and 504 IPC, taken by the Judicial Magistrate against the petitioner, a public servant, posted as Station House Officer (SHO), Police Station Masooda, is sustainable in law, for want of prior sanction, which is a statutory requirement in view of Section 197 Cr.PC, for initiating criminal prosecution of a public servant?

2. Petitioner has prayed for following relief:-

> *"It is, therefore, humbly prayed that your lordships may very graciously be pleased to allow/accept this Misc. Petition and the order dated 31.05.2011 (Annexure-4) passed by*

learned Additional District and Sessions Judge Beawar, District Ajmer dismissing the revision No.24/2009 and the order dated 30/1/2009 (Annexure-3) passed by the learned Additional Civil Judge (Jr. Div.) and Judicial Magistrate First Class, No.2, Beawar, District Ajmer (Raj.) in complaint No.7/2009 taking cognizance Under Sections 323 and 504 I.P.C. against the petitioner may kindly be quashed and set aside and complaint (Annexure-1), filed by the complainant and all subsequent proceedings against the petitioner, may also kindly be quashed and set aside."

3. The seminal facts of the case as culled out from the record, briefly stated, are that:-

3.1 During the posting of petitioner, as SHO, Police Station Masooda, District Ajmer, a criminal complaint was filed against him by respondent No.2-complainant on 27.05.2003, to criminally prosecute the petitioner for offences under Sections 323, 342, 365 and 504 IPC stating *inter alia* that three persons namely Anda (complainant-respondent No.2 herein), Mohan Singh and Narendra Singh, were arrested by the Police at about 8 PM on 22.05.2003 and were locked up in the Police Station Masooda. Thereafter, on the next day i.e. 23.05.2003, all three persons, including complainant-respondent No.2, were produced before the Court of Sub-Divisional Magistrate (SDM), and they were ordered to be released from the custody on furnishing bail bonds as directed by the SDM.

3.2 In the criminal complaint, allegations have been leveled against the petitioner that all three persons were illegally detained for one day in the Police Station, without any just reason and only in misuse of powers by the petitioner as much as in the night of 22.05.2003, the complainant-Anda and Mohan Singh were badly treated by the petitioner. Allegations have been leveled that both

were abused, misbehaved and beaten up with a rubber belt by the petitioner, in utter misuse of his powers as SHO. It was alleged that complainant-Anda and Mohan Singh received multiple physical injuries on their body parts, however, without undertaking their medical check-up, they were produced next day on 23.05.2003 in the Court of SDM. It was further alleged that after their release from the custody, a written complaint was made on 24.05.2003 to the Assistant Superintendent of Police, Beawar, complaining about arbitrary and illegal acts of petitioner, done by him with complainant-Anda and Mohan Singh, however, no action was taken on this complaint.

3.3 It is further stated that on 24.05.2003, one application was filed before the SDM, praying for allowing medical check-up of complainant-Anda and Mohan Singh, whereupon, on their request, medical check-up was allowed to be done at Community Health Center, Masooda on 24.05.2003 at about 4 PM.

3.4 It is noteworthy that thereafter, respondent No.2-Anda, has filed the present criminal complaint against the petitioner on 27.05.2003 before the Court of Additional Judicial Magistrate No.2, Beawar, to prosecute the petitioner for alleged offences u/s. 323, 342, 365 and 504 IPC. It may be noted that another person Mohan Singh has not filed any complaint.

3.5 On receiving criminal complaint of respondent No.2-Anda, the Judicial Magistrate proceeded to record statements of complainant u/s. 200 Cr.PC and witnesses Narendra Singh, Mohan Singh and Anna, u/s. 202 Cr.PC and thereafter, vide order dated

07.03.2006, the complaint was sent for further investigation, to be made by the Police.

3.6 The Police, after thorough investigation, submitted negative final report before the Judicial Magistrate on 15.01.2007.

3.7 After investigation by the Police on the criminal complaint filed by complainant-respondent No.2, the real facts unfolded, as per record and true picture came to light that indeed complainant and other two persons namely Mohan Singh and Narendra Singh were arrested by the Police in the night of 22.05.2003 under Section 151 Cr.PC in order to prevent commission of any cognizable offence by them, as they were found causing breach of peace and about to assault on the family of one Bhanwar Singh as also they attempted to assault on the Police party, who reached at the spot, Surel ka Badiya, Manpura, Ajmer, to control the situation of law & order. Thus, as per record, the correct scenario revealed, after the investigation by the Police that indeed all three persons, including complainant-respondent No.2, were arrested by the Police, after preparing a report in *Rojnamcha,* in exercise of powers u/s. 151 Cr.PC. Further, it also revealed that a complaint under Sections 107/116(3) read with 151 Cr.PC was filed by the Police in the Court of SDM on next day i.e. 23.05.2003, against all three accused persons, including the complainant-respondent No.2, when they were produced before the SDM. In this complaint, complete facts with reason of their arrest and about the apprehension of breach of peace or commission of cognizable offence by them, were detailed out. This complaint was registered on record in the Court of SDM as

Criminal Case No.95/2003: State Vs. Narendra Singh & Ors., and after making compliance of Sections 111 and 112 Cr.PC, reading over the charge and order before the accused persons, all three accepted their guilt and agreed to furnish bail bonds to maintain peace and tranquility for a period of six months. Accordingly, the SDM passed the order dated 23.05.2003, allowing to release all three accused persons, including the complainant-respondent No.2, on furnishing bail bonds to maintain peace and tranquility for a period of six months and in this view, the criminal case was disposed of, on the file of SDM.

3.8 It is noteworthy that in the inquiry report, it was observed that allegations made by complainant-respondent No.2 herein, in his criminal complaint that he was abused, misbehaved and beaten up in the Police Station by the petitioner due to rivalry and under the influence of one Bhanwara S/o Roopa, are totally false. It was also observed in the inquiry report that the complainant and other accused persons did not make any complaint, nor asked for their medical check-up, when they were produced on 23.05.2003 before the SDM, and as per statements of complainant and witnesses, allegations leveled against the petitioner in the criminal complaint, were found to be afterthoughts/fictitious and made just to harass the petitioner and to tarnish his image and position. It was also noted in the report that accused persons, including complainant-respondent No.2 herein, were arrested on 22.05.2003 and were produced on next day on 23.05.2003 before the SDM as also the criminal complaint for offences under Sections 107/116(3) read with 151 Cr.PC, was

filed by SHO against them, and all such acts were done by the petitioner in discharging of his official duties as SHO, hence no offence as alleged in the criminal complaint against the petitioner is made out.

3.9 After receiving the inquiry report, the Judicial Magistrate heard the complainant on his criminal complaint and passed the order dated 30.01.2009, taking cognizance for offences under Sections 323 and 504 IPC and issued process against the petitioner, to prosecute him.

A perusal of the order dated 30.01.2009 indicates that the Magistrate declined to take cognizance for offences under Sections 365 and 342 IPC, taking into consideration that the detention of complainant and other two accused persons at Police Station Masooda in the night of 22.05.2003 was not illegal. The Magistrate accepted that there were valid reasons to detain the complainant in order to prevent breach of peace or commission of cognizable offences and such acts were done by the petitioner in discharging of his official duty as SHO. Nevertheless, cognizance for offences under Sections 323 and 504 IPC has been taken against the petitioner, drawing a presumption that injuries of abrasions and bruises, found on the body parts of complainant-respondent No.2-Anda and Mohan Singh, as observed in their injury report dated 24.05.2003, occurred due to beatings allegedly given by the petitioner and only such act of petitioner was not treated to be done in discharging of his official duty. Accordingly, cognizance was taken without insisting for sanction u/s. 197 Cr.PC

and after taking cognizance, process was ordered to be issued against the petitioner.

3.10 The order of cognizance dated 30.01.2009 was challenged by the petitioner by way of criminal revision petition, on various grounds, including the ground that cognizance stands bad in law, being taken without insisting for sanction as required under Section 197 Cr.PC. The revision petition came to be dismissed by the Additional District & Sessions Judge, Beawar, Ajmer vide order dated 31.05.2011.

3.11 In the backdrop of such factual matrix, referred hereinabove, this petition has been filed by petitioner invoking jurisdiction of the High Court under Section 482 Cr.PC, questioning the legality of the cognizance order as also his criminal prosecution for offences under Sections 323 and 504 IPC, taking resort of protection as provided to public servants by virtue of Section 197 Cr.PC.

The petition has been admitted for hearing and vide order dated 19.08.2011, criminal prosecution of petitioner pursuant to the impugned order of cognizance has been stayed.

4. The contention of learned Senior Counsel appearing for petitioner, is that even if entire gamut of facts of the present case are taken on their face value as-it-is, alleged acts of petitioner were done in discharging of his official duty as SHO of Police Station Masooda, hence the order of cognizance passed against the petitioner without prior sanction by the concerned Authorities of the State Government stands *ex-facie* illegal and in outright breach of provision of Section 197 Cr.PC. In addition, learned

Senior Counsel contends that the complainant-respondent No.2 has not disputed allegations made by the Police in the complaint filed under Sections 107/116(3) read with 151 Cr.PC against complainant and other two persons, for which they were detained in custody at Police Station for one day, rather complainant and other two persons accepted such allegations and consented to submit bail bonds for maintaining peace and tranquility abiding themselves by the order passed by the learned SDM. Learned Senior Counsel contended that complainant, neither chose to contest the complaint filed against him under Sections 107/116(3) read with 151 Cr.PC, nor challenged the order of SDM. In such circumstances, the whole action of the Police, right from taking the peace brokers in custody and producing them before the SDM, is the act done by the Police in discharge of official duty to maintain law and order in the society, therefore, petitioner may not be allowed to be prosecuted, merely by separating action of abusing or beating, which is part and parcel to the chain of events of the action as a whole. Learned Senior Counsel submits that the investigation carried out against complainant-respondent No.2 and other two persons, who were inclined to commit a cognizable offence as also breach the peace in society in the night on 22.05.2003, was done and thereafter, the complaint under Sections 107/116(3) read with 151 Cr.PC was filed against them before the Court of SDM on the next day i.e. on 23.05.2003. Such action, even if taken on its face value, was done by the petitioner as SHO of Police Station Masooda bonafidely and in discharge of his official duty as SHO. Learned Senior Counsel submits that

firstly, the allegation of abusing and beating the complainant, is wholly false and afterthought as much as petitioner cannot be allowed to be prosecuted and cognizance for such offences cannot be taken, without insisting for grant of previous sanction by the State Government, which is essential and mandatory requirement of law as envisaged under Section 197 Cr.PC to prosecute a public servant. Learned Senior Counsel vehemently argued that if for such a legal action done by the Police, a prosecution of a Police Officer is permitted, the same would result into miscarriage of justice, because Police Officer would be able to discharge his/her official duties fearlessly and the interest of society at large, would suffer; rather a situation may arise that Police Officer, would deter to take lawful action against culprits. Hence, his submission is that the entire incident is a sequence of events in continuity to each other and may not be segregated in parts, therefore, in the backdrop of admitted facts that the detention of complainant and other two persons was made by petitioner for lawful and valid reasons, cognizance taken against the petitioner for offences u/s. 323 and 504 IPC, be held *ex-facie* illegal, perverse and in clear breach to statutory provision of Section 197 Cr.PC and consequently, criminal complaint filed against the petitioner be also quashed.

5. Learned Senior Counsel, to buttress his contentions, has placed reliance on the following case law:-

(I) **Shreekantiah Ramayya Munipalli Vs. The State of Bombay [AIR (1955) SC 287]**;

(II) **Pukhraj Vs. State of Rajasthan [(1973) 2 SCC 701]**;

(III) **Harish Chandra Vs. Central Bureau of Investigation [(1998) Cr.LR (Raj.) 136]** &

(IV) **State of Orissa Vs. Ganesh Chandra Jew [(2004) 8 SCC 40].**

6. Per contra, learned Public Prosecutor has supported the impugned orders and argued that protection of Section 197 Cr.PC has rightly been dispensed with and petitioner has rightly been deprived from such statutory protection in the given facts and therefore, impugned order of cognizance does not warrant any interference and petitioner is liable to be prosecuted.

Learned Public Prosecutor has placed reliance on a recent judgment of the Apex Court delivered on 17.01.2024 in **Criminal Appeal No.256/2024: Shadakshari Vs. State of Karnataka [2024 LiveLaw (SC) 42]**.

7. On behalf of complaint-respondent No.2, despite service of notices for hearing of this petition, as reported by the Office, no one has put in appearance to oppose the petition, therefore, arguments made by the learned Public Prosecutor, to justify impugned orders, have been accepted for and on behalf of complainant-respondent No.2 as well.

8. Heard learned counsel for both parties at length and perused the record as a whole.

9. In the beginning, this Court deems it just and proper to observe that it is apparent from the record that order of cognizance was challenged by the petitioner before the sessions

Court by way of filing criminal revision petition u/s. 397(1) Cr.PC, which petition has been dismissed on merits, therefore from that view, a prohibition for High Court to entertain a second criminal revision petition as envisaged under Section 397(3) Cr.PC, comes in operation. Nevertheless, the present petition has been filed by petitioner invoking inherent jurisdiction of the High Court u/s. 482 Cr.PC and it is well established proposition of law, as has been settled by way of judicial precedents that though revision before the High Court u/s. 397(1) Cr.PC is prohibited, by virtue of Sub-section (3) thereof, even though powers of the High Court under Section 482 read with Section 483 Cr.PC, may be exercised provided that on examination of facts and circumstances of any peculiar case, there appears to be a failure of justice or sustenance of impugned orders would result into injustice, hence it can be held that in such exceptional cases, in order to prevent abuse of process of Courts or to otherwise render *ex-debito justitiae* to the aggrieved party, inherent jurisdiction by the High Court u/s. 482 Cr.PC, can be exercised despite prohibition of Section 397(3) Cr.PC. It is no more *res integra* that powers by the High Court u/s. 482 Cr.PC can be exercised to set aside the order(s) passed by the Courts subordinate to the High Court, if order(s) impugned was/were passed in clear breach of statutory provision of law or suffer from patent defect or manifest illegality of jurisdiction or law. Similarly, by virtue of Section 483 Cr.PC, the High Court is bestowed with powers of superintendence over the Courts of Magistrates and all other Courts, which may be exercised in appropriate cases wheresoever, it is noticed by the

High Court on examination of facts of case that action or order passed by the Magistrate is in absolute contravention to the provision of law or contrary to the settled proposition of law as much as interference is needed with the order, to prevent failure of justice or otherwise to secure ends of justice.

Keeping in mind such settled proposition of law about jurisdiction of the High Court and after adverting to facts of the present case and hearing learned counsel, this petition is being considered on merits.

10. Coming to facts of the present case, it is clear from the record that captioned criminal complaint was filed by complainant-respondent No.2 against the petitioner on 27.05.2003 and a cumulative allegations have been leveled that petitioner misused his power and position, being SHO of Police Station Masooda and kept the complainant as well as other two persons, namely Narendra Singh and Mohan Singh, captive in the Police Station Masooda, in the night of 22.05.2003, and abused, misbehaved and gave beatings to the complainant and Mohan Singh. Such allegations made by the complainant in the criminal complaint, are combined, having nexus/connection with each other, being in sequence of events. According to the complainant, all such alleged actions of the petitioner were, arbitrary and illegal and were done because of rivalry and under the influence of one Bhanwara S/o Roopa. Other two persons have not filed any complaint, though have deposed their statements in support of the complaint filed by the respondent No.2. It may be noted that neither the complainant nor other two persons, made any complaint at the

first instance on 23.05.2003 when they were produced by the petitioner before the Court of SDM. On the contrary, before the SDM, all three accepted their guilt and expressed their willingness to abide by the order of SDM to furnish bail bonds to maintain peace and tranquility in the society for a period of six months. It is matter of concern and needs to be noted that if complainant and Mohan Singh had suffered simple injuries of bruises, abrasions, swelling etc. on their body parts, they could complain before the SDM at the first instance on 23.05.2003 itself, but it was not done. It is only on the basis of subsequent injury report dated 24.05.2003, complaint has been filed by the complainant on 27.05.2003, before the Judicial Magistrate.

11. It is noteworthy that on the record of Judicial Magistrate, a clear and correct scenario had come on record that arrest and detention of complaint-respondent No.2 with other two persons at Police Station Masooda in the night of 22.05.2003, was made by the Police in lawful exercise of powers under Section 151 Cr.PC in order to prevent commission of a cognizable offence and to prevent breach of peace and tranquility in the society by the culprits. The Judicial Magistrate clearly observed and held that the detention of complainant-respondent No.2 in the Police Station Masooda was not illegal detention. Thus, as far as allegation of complainant for his illegal detention is concerned, the same has been found to be false and contrary to record and no cognizance for offence under Sections 365 and 342 IPC has been taken by the Judicial Magistrate. However, the Judicial Magistrate draw a presumption that abrasions, bruises and swelling on the body

parts of complainant and Mohan Singh, are result of beatings allegedly given to them by the petitioner in the night of 22.05.2003 during their detention in the police station, whereas the Magistrate himself has accepted that their detention was lawful and for valid reasons as much as a criminal complaint under Sections 107/116(3) read with 151 Cr.PC was filed by the Police against them on 23.05.2003 before the Court of SDM, after completing the investigation.

12. It is no doubt true that cognizance of offence can be taken on the basis of presumption or suspicion about occurrence of an offence, but in the present case, presumption of truthfulness of the allegations made by the complainant, may not be presumed because, the complainant did not produce correct and complete facts on record before the Judicial Magistrate. It was only after the investigation by the Police, complete facts came on record that a criminal complaint under Sections 107/116(3) read with 151 Cr.PC was filed by the Police against the complainant and other two persons, when they were produced before the Court of SDM on 23.05.2003. The complainant deliberately and knowingly concealed the facts that he accepted his guilt and the allegations leveled against him by the Police in the criminal complaint filed under Sections 107/116(3) read with 151 Cr.PC. This uncontroverted factual matrix came on record only, after investigation by the Police. This is not in dispute that complainant neither controverted nor countered the allegations leveled against him and other two persons, in respect of committing breach of peace and they were inclined to commit a cognizable offence, due

to which they were arrested. Rather, on the contrary, complainant and other two persons, accepted allegations and furnished bail bonds without any demeanor on 23.05.2003 before the Court of SDM. As far as such proceedings are concerned and the order dated 23.05.2003 passed by the Court of SDM is concerned, the same have not been questioned by the complainant-respondent No.2 at any point of time. Yet, the complainant never disclosed these facts in his criminal complaint. Looking to the such conduct of complainant and considering totality of facts and circumstances, where the criminal complaint has been filed after 4-5 days from the incident on the basis of post injury report dated 24.05.2003, more over making out a false story of his illegal detention, possibility of involving the petitioner in the criminal litigation just to wreck vengeance, may not be ruled out.

13. Considering the entirety of facts and taking them cumulatively, the acts done by the petitioner, have been purportedly done in discharge of his duties as SHO. It is not only the arrest of complainant-respondent No.2 with other two persons, was made, but the investigation from them was also carried out and thereafter, criminal complaint for offences under Sections 107/116(3) read with 151 Cr.PC was filed against them. Although, allegations of abusing, misbehaving and beating the complainant by the petitioner, do not inspire confidence, even on the basis of presumption yet even if for the sake of arguments, such allegations are taken on their face value, and considered with other allegations, the true position transpires that the entire series of events have nexus with each other and the action of petitioner

was done in discharge of his official duties. For the sake of arguments, if any part of act of petitioner, is treated to be in excess of his duty in mistaken belief, then also in the backdrop of admitted fact that petitioner did acts being posted as SHO of Police Station, he should not be deprived from the protection of law as available to a public servant against his criminal prosecution by virtue of Section 197 Cr.PC.

14. It is not that case where complainant and Mohan Singh, have been beaten up brutally and had suffered grave or serious injuries or a case of encountered deaths. It is a simple case where the complainant alleges to suffer some simple injuries of abrasion and bruises on his body parts during course of his detention in the Police Station. As has been noted hereinabove that the complainant and other two persons were found guilty for committing breach of peace and inclined to commit a cognizable offence, therefore, they were taken in custody by the Police and after interrogation, a complaint against them was filed for offences under Sections 107/116(3) read with 151 Cr.PC and allegations leveled against the complainant was accepted by him. Looking to the nature of injuries, which are simple abrasion, bruises, it is difficult to connect such injuries to be caused by the petitioner, as possibility of suffering from such simple injuries by the complainant and Mohan Singh, prior to their arrest on 22.05.2003 and after their release on 23.05.2003 may not be ruled out and merely on the basis of remote presumption, the Judicial Magistrate erred in taking cognizance for offences under Sections 323 and 504 IPC against the petitioner that too without insisting for

previous sanction in view of Section 197 Cr.PC, more particularly when the Judicial Magistrate himself agreed that the action of petitioner to arrest the complainant-respondent No.2 along with other two persons, was done in discharge of his official duty.

15. Therefore, considering the entire stock of events cumulatively and holistically, this Court finds that the action of Police including the petitioner, is nothing but the action, as a whole, falls within purview of words "*while acting or purporting to act in the discharge of his official duty*" and therefore, petitioner should be held entitled for statutory protection against the criminal prosecution as envisaged u/s. 197 Cr.PC.

16. The ambit, scope and effect of Section 197 Cr.PC and in what circumstances, the protection of this section is available to a public servant against his/her criminal prosecution, has been a point of discussion since long and huge case law is available on this point. It would be appropriate to advert attention on few of judgments to take gist of judicial precedents in this regard.

17. The Co-ordinate Bench of this High Court in case of **Harish Chandra** (Supra), extended protection of Section 197 Cr.PC to petitioners, who were working on the post of S.P. and Additional S.P. and against whom, cognizance was taken by the Judicial Magistrate for the acts done by them in discharge of their official duty of interrogation of a crime despite of negative final report and having no sanction for prosecution. The Coordinate Bench, after dilating umpteen number of judgments, observed in Para No.10 to 13 as under:-

"10. On a study of the cases relied upon by the learned counsel for the parties before me it is gathered that the words "acting or purporting to act in the discharge of his official duty" occuring in the language of Sec. 197(1) Cr.P.C. have arrested the attention of the Courts time and again. Way back in Hari Ram Singh's case AIR 1939 FC 43 Sulaiman J. of the Fedral Court observed that-

> "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 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 inseperably connected with the official duty as to form part and parcel of the same transaction."

In the same case Varadachariar, J. also observed that-

> "There must be something in the nature of the act complained of that attaches it to the official character of the person doing it."

11. The views expressed by the learned Judges of the Fedral Court were affirmed by the Judicial Committee of the Privy Council in Gill's case AIR 1948 PC 128 in the following word —

> "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, he does in virtue of his office."

12. The correctness of the view expressed by their Lordships of the Privy Council in Gill's case appears to have fallen for consideration of their Lordships of the Supreme Court in the case of Matajog Dubey vs. H.C. Bhari, AIR 1956 SC 44 and their Lordships felt that the test laid down that it must be esteblished that the act complained of was an official act unduly narrowed down the scope of the protection afforded to the public servant by Sec. 197. After examining earlier decisions their Lordships observed that—

> "There must be a reasonable connection between the act and the discharge of the official duty, the act must bear such relation to the duty, that the accused would lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of performance of his duty."

13. Applying the above test in the case of Pukh Raj Vs State of Rajasthan [(1973) 2 SCC 701] the acts of kicking the

complainant and of abusing him were considered as having been done in the course of performance of his duty by the public servant. But in the case of S.P. Venthianathan Vs Shanmuganathan [JT 1994 (2) SC 689], dealing with the scope of protection provided by Sec. 53 of the Tamil Nadu District Police Act, 1869 the Apex Court observed that "merely because the appellant was called through a summons issued under law, the conduct of beating and torturing the appellant on the latter appearing in obedience to the summons cannot establish any nexus between the official act of issuance of summons and the action of the respondents on the appearance of the appellant. Unless a relationship is established between the provisions of law 'under' which the respondant purports to act and the misdemeanour complained of the provisions of Sec. 53 will not be attracted." It was, therefore, em-phasised in Bakhshish Singh's case that:

> "It is necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecutions, that is the rationale behind Sec. 196 and Sec. 197. Cr.P.C But it is equally important to emphasise that the rights of the citizens should be protected and no excesses should be permitted. "Encounter deaths" has become too common. In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties and whether the public servant has exceeded his limit.."

(Emphasis Supplied)

The Coordinate Bench finally held that it is not disputed that both petitioners had been working at the relevant time in their capacities of SP & ASP. It is prima facie evident that the act of petitioners was quite reasonably connected with the discharge of their official duties. It was part of their official duties to have interrogated Rameshwar Lal in relation with his alleged complicity in the crime. There act, was, therefore, not un-connected with the discharge of official duties by them. In such backdrop of facts, protection under Section 197 Cr.PC was extended and the

cognizance order as well as prosecution of petitioners without procuring sanction under Section 197 Cr.PC, was quashed.

18. The Apex Court in case of **Ganesh Chandra Jew** (Supra), while considering the issue of protection of Section 197 Cr.PC to the public servant, observed that use of expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The scope of extending protection was widen in respect of even those acts or omission, which are done by a public servant in purported exercise of his official duty. It was held that 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 ready reference, portion of findings as noted in Para Nos.11 and 12 of the judgment, are being extracted hereunder:-

> "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 therefor 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. Bihari (AIR 1956 SC 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."

19. On the point as to on what stage, the issue of insisting of sanction under Section 197 Cr.PC may arise, the Apex Court in case of **Om Prakash Vs. State of Jharkhand [(2012) 12 SCC 72]**, observed and held that it may arise even at the stage of inception. It was observed that there may be unassailable and unimpeachable circumstances on record, which may establish at the outset that the Police Officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 Cr.PC. It was observed that unless unimpeachable evidence is come on record to establish that the action of Police is indefensible, mala fide and vindictive, the Police

cannot be subjected to prosecution and sanction must be a precondition of their prosecution.

20. The Hon'ble Supreme Court recently in case of **D. Devaraja Vs. Owais Sabeer Hussain [(2020) 7 SCC 694]**, discussed the object of sanction for prosecution under Section u/s. 197 Cr.PC in detail as also expounded test to decide the same. The provision of Section 170 of the Karnataka Police Act, 1963 was also taken into consideration as applicable in the State. The Apex Court held that the object of sanction for prosecution, whether under Section 197 Cr.PC or under Section 170 of the Karnataka Police Act, 1963, is to protect a public servant /police officer discharging official duties and functions from harassment by initiation of frivolous retaliatory criminal proceedings. For ready reference, relevant portion of the judgment i.e. Para Nos.65 to 71 are being extracted hereunder:-

> "65. The law relating to the requirement of sanction to entertain and/or take cognizance of an offence, allegedly committed by a police officer under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, is well settled by this Court, inter alia by its decisions referred to above.
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> 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 197of 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 police man 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 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 Sectioin 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act."

21. In case of **Shadakshari** (Supra), referred by learned Public Prosecutor, the Apex Court has also relied upon the exposition of law, as propounded in case of **D. Devaraja** (Supra), however, protection of Section 197 Cr.PC was declined for the reason, because that was a case where the public servant (respondent

No.2 therein) was found involved in fabricating official documents by misusing his official capacity, therefore, in such peculiar circumstances, protection under Section 197 Cr.PC was declined.

22. In the opinion of this Court, considering the entirety of facts and allegations leveled against the petitioner in the present case, analogy followed by the Apex court in case of **Shadakshari** (Supra), does not apply to the present case, rather the case is covered by the ratio of law as expounded by the Apex Court in case of **D. Devaraja** (Supra).

23. Having enlightened with the proposition of law, as referred hereinabove, and testing the present case on that anvil, as also keeping in mind the uncontroverted facts that arrest & detention of complainant-respondent No.2, was made by petitioner in due discharge of his official duties as SHO and after completing investigation, the criminal complaint under Sections 107/116(3) read with 151 Cr.PC was filed against him on next day before the Court of SDM, whereupon, he accepted his guilt and furnished bail bonds to maintain peace and tranquility as much as no complaint was made on the first day about any maltreatment or beatings given to him by the petitioner in the Police Station, rather allegations have been made after four days of his release by way of filing present complaint on 27.05.2003, this Court finds that entire acts have connection and nexus to each other and were done in discharge of official duties by the petitioner, therefore, dispensing with the mandatory requirement of provision of sanction as envisaged u/s. 197 Cr.PC against the petitioner, would lead to failure of justice. Admittedly, the complainant-respondent

No.2 and other two persons never questioned the proceedings commenced and concluded against them under Sections 107/116(3) read with 151 Cr.PC and they abide themselves with the order of SDM. In such facts and circumstances, taking cognizance for offence under Sections 323 and 504 IPC against the petitioner, without insisting for sanction, which is statutorily required in view of Section 197 Cr.PC, may not be countenanced and without sanction, the prosecution of petitioner may not be permitted. The Apex Court in case of **D. Devaraja** (Supra), while dealing with the issue in respect of sanction under Section 197 Cr.PC, has already held and observed that petition under Section 482 Cr.PC is maintainable to quash criminal proceedings, which are *ex-facie* bad, for want of prosecution. Indisputably, in the present case, sanction has not been granted.

24. In view of above discussions, this Court comes to the conclusion that prosecution of the petitioner is not liable to proceed further in absence of sanction u/s. 197 Cr.PC and therefore, impugned order of cognizance as also the order of revisional Court, are liable to be set aside. This Court finds that in facts and circumstances of the present case, there exists satisfactory grounds to exercise inherent powers u/s. 482 Cr.PC in order to prevent abuse of process of law.

25. As a result, the present criminal misc. petition is allowed and the impugned order of cognizance dated 30.01.2009 as also the order of revisional Court dated 31.05.2011, are hereby quashed, for want of sanction under Section 197 Cr.PC against the petitioner and for the same reason, proceedings against the petitioner in

criminal complaint bearing No.7/2009, are hereby quashed. However, it is hereby observed that in case, sanction to prosecute the petitioner is granted as per provision of Section 197 Cr.PC, within a period of 90 days, the present criminal complaint along with the order of cognizance would stand revive.

26. All pending application(s), if any, stand(s) disposed of.

27. Record of courts below be sent back and a copy of this Judgment be sent to the trial Court for compliance.

(SUDESH BANSAL),J

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