

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL REVISION CASE No.2603 OF 2012

ORDER:

1 Aggrieved by the order dated 22.12.2012 passed in C.C.No.2 of 2012 on the file of the Court of the Chief Judicial Magistrate at Warangal wherein and whereby the Court below observed that prima facie case is made out against the petitioner for the offence punishable under Section 188 IPC and took cognizance thereof, the petitioner filed the present criminal revision case.

2 The facts in brief are that on 21.12.2012 at 5.00 pm, the S.I. of Police, Subedari P.S lodged a written complaint stating that on the same day while he was performing route bandobusth duty from Haritha hotel to DPO centre, in view of the visit of the Chief Minister of A.P, Hyderabad to Warangal, to inaugurate Kaktiya Utsavalu, and when they were on that duty, at 3.20 p.m, when the convoy reached Haritha hotel, in the meantime, Jorika Ramesh, Vasudeva Reddy, Dharshan Singh, Anil, Sanku Narsinga Rao, Yellavula Rajendra Yadav and some others who are the TRS party sympathisers have formed themselves into unlawful assembly with conspiracy and wrongfully

restrained the convoy, hurled slogans and pelted stones on the bus in which the Chief Minister was travelling resulting breaking of wind screens of the bus. In that connection a case in Cr.No.469 of 2012 under Sections 143, 120(B), 341, 427 r/w 149 IPC and Section 3 of Prevention of Damage to Public Property and under Section 7 (1) of Criminal Law Amendment Act, was registered. Consequent upon the registration of the said crime, the police apprehended A.1 to A.6 connected to that case and brought them to police station at 6.00 p.m. on the same day.

3 Be that as it may, apprehending that the police may use third degree upon A.1 to A.6 in the above crime, one Mr. Sk.Abdul Nabi, advocate filed a petition under Section 97 Cr.P.C. before the learned Chief Judicial Magistrate, Warangal requesting the Court to issue warrant of search to search whether his clients, whose names as stated supra, were in the premises of the police station Subedari and also to appoint an advocate commissioner to search the police station and if the said persons were found in the premises of the police station, they may be directed to be produced before the Court of law

and also to take appropriate steps against the police who are responsible for illegal custody of the said persons.

4 On filing of such an application, the learned Chief Judicial Magistrate, Warangal, ordered that application for search of the police station, Subedari and accordingly two advocates by name K.Ramesh and M.Ravinder were appointed as advocate commissioners for conducting search, who after conducting the search have filed report before the learned Chief Judicial Magistrate, Warangal on 9.25 p.m. on the same day i.e. 21.12.2012 to the effect that they found A2 to A.6 in Cr.No.469 of 2012 in the police station Subedari. When they searched the police station in pursuance of the warrant of search, the C.I. of Police and other police men obstructed them from discharging their duty and instructed them to leave the police station, Subedari stating that they themselves would produce A.2 to A.6 before the Court. As a result, the Advocate Commissioners have not produced A.2 to A.6 before the learned Chief Judicial Magistrate though they stated to have found the detinue in the police station, Subedari.

5 Thereafter, at about 10.55 pm, the police produced A.2 to A.6 before the learned Chief Judicial Magistrate, by which time, the Advocate Commissioners have already filed their report. Hence the C.I. of police by name V.Suresh (petitioner herein) appeared before the open court by producing A.2 to A.6. A copy of the report submitted by the Advocate Commissioner was furnished to him and he also acknowledged the same.

6 The learned Chief Judicial Magistrate recorded the sworn statements of the Advocate Commissioner Sri M.Ramesh and also sworn statement of A.2 in Cr.No.469 of 2012. On perusal of the report submitted by the Advocate Commissioners and the sworn statements of the accused, the learned Chief Judicial Magistrate opined that the very fact that A.2 to A.6 were produced before the said court instead of producing them before the jurisdictional Magistrate, without there being any such direction, goes to show that the Advocate Commissioners conducted search in the police station, Subedari as per the search warrant issued by the learned Chief Judicial Magistrate, Warangal, and found the A.2 to A.6 in the police station and the C.I. of police (petitioner herein) has wilfully disobeyed the orders of the

learned Chief Judicial Magistrate by obstructing the Advocate Commissioners from producing A.2 to A.6 before the learned Chief Judicial Magistrate in pursuance of the search warrant.

7 The learned Chief Judicial Magistrate, vide her order dated 22.12.2012, further opined that the C.I. of police, with a view to buy time to register a case against A.2 to A.6, did not allow the Advocate Commissioners to produce A.2 to A.6 before the learned Chief Judicial Magistrate as per the search warrant and accordingly requested the Superintendent of Police, and DIG of Police, Warangal to proceed against the petitioner herein for obstructing the execution of the search warrant issued by the said court. Consequent upon such findings being given, the learned Chief Judicial Magistrate took cognizance of the offence under Section 188 IPC against the petitioner and registered a case in C.C.No.2 of 2012. As stated supra, aggrieved thereby, the petitioner filed the present criminal revision case.

8 Section 2 (d) CPC defines as follows:

Every officer of a court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath,

or to interpret, or to preserve order, in the Court, and every person especially authorised by a court of Justice to perform any of such duties.

9 Section 21 IPC also says as follows:

Any officer commissioned under the Military, Naval, and Air forces of the country; Any judge or designated person who is lawfully empowered to discharge any adjudicatory functions, whether by himself or as a member of the bodies of the persons; Any officer of a court of justice whose duty is to investigate any matter of law or to report the matter. The officer who is allowed to keep the record of the matter, or to take the charge to dispose of any property or to execute any judicial process or who can administrate any oath-taking, or preserve any order of the court, any person who is appointed by the court with the authority to perform these duties.

10 So from the above definition, it can safely be concluded that Advocate Commissioners are public servant.

11 Section 188 IPC defines as follows:

188. Disobedience to order duly promulgated by public servant.—

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.— It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

12 To put it simply the essential ingredients of this offence are: i) Promulgation of a legal order, ii) its communication to the accused, iii) its disobedience by him, and iv) the injurious consequence as described in the section.

13 In the instant case, upon the application filed under Section 97 Cr.P.C., the learned Chief Judicial Magistrate, Warangal, had issued an order appointing two advocates as commissioners to search and report whether the accused persons concerned with Cr.No.469 of 2012 were lodged in the police station, Subedari or not and if so to produce them before the Court.

14 In due obedience to the above warrant of appointment as commissioners, the learned advocate commissioners have visited the police station Subedari and showed the warrant of search to the petitioner stating that they visited the police station in that regard.

15 Though the petitioner was aware of the warrant of search, he obstructed the advocate commissioners from executing the warrant and stated that he would produce the accused persons in the Court and accordingly he disobeyed the order of the Court.

16 The advocate commissioners though found the accused persons in the police station, Subedari, in view of the obstruction caused by the petitioner they could not produce the accused before the Court of law.

17 Hence to that extent, it is established about the promulgation of the order, appointment of advocate commissioners who are public servants in the eye of law as per Section 21 IPC and Section 2 (d) CPC, disobedience of the said order by the petitioner and the failure of the advocate commissioners in executing the warrant due to the obstruction caused by the petitioner.

18 The learned counsel for the petitioner submits that as per Section 195 Cr.P.C, which specifically says that no court shall take cognizance of an offence punishable under Section 188 IPC except on a complaint in writing of the public servant concerned or by some public servant to whom he is administratively subordinate. The learned counsel for the petitioner relied on the judgment of the apex Court in **Shamim Khan vs. Debashish Chakrabarty** {**Special Leave to Appeal (crl.) No(s). 3567-3568/2017**}.

19 In the instant case, a written complaint was lodged by the advocate commissioner, being a public servant, bringing the obstruction caused by the petitioner, in execution of the warrant, to the notice of the Court. Hence the above contention of the learned counsel for the petitioner cannot be countenanced. Therefore, the bar contained in Section under Section 195(1) (a) of the Cr.P.C., does not apply to the case on hand.

20 The predominant contention of the learned counsel for the petitioner is that Section 197 Cr.P.C. stipulates that no Court shall take cognizance of any offence by a public servant in discharge of his official duties except with the previous sanction of the State Government and in the instant case no such sanction has been given and as such the proceedings impugned are liable to be set aside. The learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in **Sankaran Moitra vs. Sadhna Das**¹.

21 It is not every offence committed by a public servant that requires sanction for prosecution under Section 197 (1) Cr.P.C.

¹ (2006) 4 SCC 584

Whether sanction is required under Section 197 (1) Cr.P.C. will depend upon the facts of the each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197 (1) Cr.P.C. would be necessary. But if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required. The offence alleged to have been committed must have something to do or must be related in some manner, with the discharge of official duty.

22 A constitution Bench of the Hon'ble Supreme Court in **Matajog Dobey vs. H.C.Bhari**², after holding that Section 197 of the Code of Criminal Procedure was not violative of the fundamental rights conferred on a citizen under Article 14 of the Constitution of India, observed on the test to be adopted for finding out whether Section 197 of the Code was attracted or not and to ascertain the scope and meaning of that Section, stated:

² {1955} 28ITR 941 (SC)

...No question of sanction can arise under Section 197 Cr.P.C unless the act complained of is an offence. The only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merit. What the Court must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, through possibly in excess of the needs and requirements of the situation.

.....The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from state to state. The necessity may reveal itself in the course of the progress of the case."

Their lordships summed up the position 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."

23 Though the petitioner contends that whatever done by him was done while he was on official duty and in discharge of his official duty and hence he is cloaked with Section 197 Cr.P.C. In **Sankaran Moitra** case (1 supra), Sri C.K.Thakker, J, while quoting the observations made by the Federal Court in *Dr.Hori Ram Singh vs. Emperor*³, observed as follows:

³ 1939 FCR 159

35. So far as the provisions of the Section 197 are concerned, they came up for judicial interpretation in several cases. One of the leading cases which has been referred to in several decisions thereafter was of Dr. Hori Ram Singh v. . Emperor MANU/FE/0001/1939 Their Lordships of the Federal Court in Dr. Hori Ram Singh were called upon to consider Section 270 of the Government of India Act, 1935 which was similar to Section 197 of the present Code. Sulaiman, J., interpreting the said section, observed that the question of good faith or bad faith would not strictly arise in interpreting the provision inasmuch as the words used in the section were not only "any act done in the execution of his duty" but also "any act purporting to be done in the execution of duty". It was, therefore, held that when the act is not done in the execution of the duty, but is purported to be done in the execution of the duty, it would be covered.

36. The learned Judge stated; "Obviously the section does not mean that the very act which is the gravamen of the charge and constitutes the offence should be official duty of the servant of the Crown. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The words as used in the Section are not "in respect of any official duty" but "in respect of any act done or purporting to be done in the execution of his duty". The two expressions are obviously not identical. 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 the execution of the duty. The reference is obviously to an offence committed in the course of an action, which is taken or purports to be taken in compliance with an official duty, and is in fact connected with it. The test appears to be not that the offence is capable of being committed only by a public servant and not by any one else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his 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 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. If the act complained of is an offence, it must necessarily be not an execution of duty, but a dereliction of it. What is necessary is that the offence must be in respect of an act done or purported to be done in execution of duty, that is, in the discharge of an official duty. It must purport to be done in the official capacity with which he pretends to be clothed at the time, that is to say under the cloak of an ostensibly official act, though of course, the offence would really amount to a breach of duty. An act cannot purport to be done in

execution of duty unless the offender professes to be acting in pursuance of his official duty and means to convey to the mind of another, the impression that he is so acting."

24 In the very same judgment, it was further observed as follows:

39. Again, in *Amrik Singh v. State of Pepsu* {1955 CriLJ 865} this Court held that it is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code, nor every act done by him while he is actually engaged in the performance of his official duties, so that, if questioned, it could be claimed to have been done by virtue of the office. It is only when the act complained of is directly connected with his official duties that sanction is necessary.

40. Speaking for the Court, Venkatarama Ayyar, J. referring to the relevant decisions on the point, formulated the principle:

The result of the authorities may thus be summed up: It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution.

43.4 In *P.K. Pradhan v. State of Sikkim* 2001 CriLJ 3505, after referring to relevant case law on the point, it was observed that different tests have been laid down to ascertain the scope and meaning of the relevant words occurring in Section 197 "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". It was then stated that the offence alleged to have been committed must have something to do, or must relate in some manner, with the discharge of official duty of a public servant. No question of sanction would arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as that question would arise only at a later stage

when the trial proceeds on the merits. What a court must consider is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty. If the answer to the said question is in affirmative, Section 197 will be attracted, but not otherwise. This Court reiterated that the question as to applicability of Section 197 of the Code can be raised at any stage of the proceedings. In order to come to the conclusion, whether the claim of the accused that the act he had committed was in the course of performance of his duty was a reasonable one and neither pretended nor fanciful can be examined during the course of trial by giving opportunity to the defence to establish it and the question of sanction would be left to be decided in the main judgment which may be delivered upon at the conclusion of the trial.

25 From the above ratio decidendi what is to be observed is whether the petitioner herein had in discharge of his official duty has obstructed the advocate commissioners or whether the act of the petitioner in obstructing the advocate commissioner is out of the purview of his official duty.

26 Reverting to the facts of the case, when the advocate commissioner went to the police station, Subedari, in order to execute the warrant of search, the petitioner being the Inspector of the said police station obstructed the commissioner and not allowed the commissioner to search the police station for the accused concerned with Crime No.469 of 2012, which act in my considered view is not connected with his official duty. In obedience to the warrant of search

given to them, the commissioners went to the P.S, Subedari in search of the accused concerned with the crime stated supra and if they are found in the said police station, they were under the power and authority to produce them before the learned Chief Judicial Magistrate. But that lawful duty was obstructed by the petitioner herein, in utter derogation to the order of the Court. So, in my considered view, the petitioner cannot seek protection under Section 197 Cr.P.C. because the act of such obstruction which he caused to the advocate commissioners cannot be termed as 'while discharging official duty'.

27 The purport of Section 197 Cr.P.C is to accord sanction for prosecuting a public servant so as to prevent abuse of process of law and to avoid vexatious litigation as against them and hence public servant is being privileged under this Section to discharge his / her duties without any apprehension of being targeted for the actions taken in furtherance of such duties in accordance with law.

28 The scheme of law is that on a complaint being lodged, the police register FIR under Section 154 Cr.P.C. and thereafter the

investigating agency will conduct investigation and file a final report under Section 173 Cr.P.C.

29 Otherwise, a complaint has to be filed under Sections 190 and 200 Cr.P.C and upon reference under Section 156 (3) Cr.P.C., the police has to register a case and conduct investigation into the allegations made in the complaint and thereafter also they have to file a final report under Section 173 Cr.P.C. After filing of the final report, discretionary power is given to the competent criminal Court either to take it into cognizance or to reject the same. The criminal Court is vested with the power under Section 202 Cr.P.C. to conduct inquiry and thereafter the scheme of law would follow.

30 So there are two stages i.e. 1) pre-cognizance stage and 2) cognizance stage. So far as pre-cognizance stage is concerned, investigation would come to end the moment the police file final report under Section 173 Cr.P.C. Thereafter power is vested with the competent criminal court either to take cognizance or not.

31 Now, so far as claiming protection under Section 197 is concerned, it is for the investigating agency to obtain sanction before

conducting investigation into the complaint, provided the accused therein is a public servant, within the meaning of Section 21 IPC in the absence of which the investigating agency cannot conduct investigation.

32 In the case on hand, the contention of the petitioner, who is Inspector of Police, is that previous sanction as contemplated under Section 197 Cr.P.C., was not obtained before taking cognizance of the offence under Section 188 IPC alleged against him and hence it is illegal and against the established principles of law.

33 At this stage, the point that would arise for consideration is whether the cognizance taken by the Court on the complaint filed by the advocate commissioners does fall within the ambit of Section 202 Cr.P.C and the power of the Magistrate is sacrosanct and if so whether sanction under Section 197 Cr.P.C. would be necessitated.

34 In view of the judgment of the Hon'ble Supreme Court **Amod Kumar Kanth vs. Association of Victim of Uphaar Tragedy**⁴, wherein the Hon'ble Supreme Court held that The State functions

⁴ 2023 SCC OnLine SC 578

though its officers. Functions of the State may be sovereign or not sovereign. But each of the functions performed by every public servant is intended to achieve public good. It may come with discretion. The exercise of the power cannot be divorced from the context in which and the time at which the power is exercised or if it is a case of an omission, when the omission takes place.

35 In **Union of India vs. Pratibha Bonnerjea**⁵, the Hon'ble Supreme Court held that from the scheme of the constitution to which we have adverted briefly it is obvious that the constitution – makers were evidently keen to ensure that the judiciary was independent of the executive. An independent impartial and fearless judiciary is our constitutional creed. The constitution has tried to insulate the judiciary from outside influence from both the executive and the legislature. The provisions of Chapter VI in Part VI of the constitution dealing with the courts below and the State High Court also show that the constitution-makers were equally keen to insulate even the subordinate judiciary.

⁵ (1995) 6 SCC 765

36 In **Union of India vs. Madras Bar Association**⁶ the Hon'ble Supreme Court held that impartiality, independence, fairness and reasonableness in decision-making are the hallmarks of the judiciary. If "impartiality" is the soul of the judiciary, "independence" is the lifeblood of the judiciary. Without independence, impartiality cannot thrive. Independence is not the freedom for Judges to do what they like. It is the independence of judicial thought. It is the freedom from interference and pressures which provides the judicial atmosphere where he can work with absolute commitment to the cause of justice and constitutional values. It is also the discipline in life, habits and outlook that enables a Judge to be impartial. Its existence depends however not only on philosophical, ethical or moral aspects but also upon several mundane things—security in tenure, freedom from ordinary monetary worries, freedom from influences and pressures within (from others in the judiciary) and without (from the executive)

37 In **Union of India vs. Sankalchand Himatlal Sheth**⁷, it is to be seen that Judiciary is not subservient to the executive. Therefore,

⁶ (2010) 11 SCC 1

⁷ (1977) 4 SCC 193

obtaining sanction to conduct investigation into the allegations made in the complaint lodged by the advocate commissioners, by the Court, does not arise at all when the matter is taken cognizance by the court itself for violation and disobedience to the orders of the court.

38 The entire matter revolves around disobedience of the orders of the Court; not that the court has taken cognizance to investigate against the officer rightly or wrongly in Cr.No.469 of 2012 and it is only in the matter of disobeying the order, whereby the learned trial court, having *prima facie* satisfied on the report filed by the Advocate Commissioner, had to take cognizance by assigning C.C.No.2 of 2012 to adjudicate the matter in accordance with law. Therefore, the stage of trial has started from the stage of taking cognizance itself. Questioning of obtaining sanction for investigation under Section 197 Cr.P.C. to register a crime under Section 154 Cr.P.C. or under Section 200 Cr.P.C. does not arise and the mandate as claimed by the petitioner under Section 197 Cr.P.C is not applicable. Therefore and under these circumstances this Court does not see any necessity for invocation of Section 197 Cr.P.C.

39 Moreover, as observed in the judgments referred supra, aspect of grant of sanction cannot be determined at the threshold of the case. The concept of Section 197 Cr.P.C. does not get immediately attracted on institution of the complaint case. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case since causing obstruction to the advocate commissioners who were empowered to search the police station cannot be treated as official duty.

40 In **Sankaran Moitra vs. Sadhna Das**⁸ the Hon'ble Supreme Court held that shield under Section 197 Cr.P.C. does not extend to illegal, unlawful and high-handed behaviour of public servants. In **Devinder Singh vs. State of Punjab through CBI**⁹ the Hon'ble Supreme Court held that a public servant is not entitled to indulge in criminal activities and in such cases sanction under Section 197 Cr.P.C is not required. The principle laid down in **Shamim Khan vs. Debashish Chakrabarty**, relied on by the learned counsel for the

⁸ (2006) 4 SCC 584

⁹ (2016) 12 SCC 87

petitioner has no legs to stand in the facts and circumstances of the present case.

41 For the foregoing discussion and in the light of the principle enunciated in the cases cited supra, I find no irregularity or illegality in the impugned order and accordingly this criminal revision case is dismissed, leaving it open to the court below to proceed in accordance with law and procedure during the course of which the necessity of sanction may be decided.

42 Miscellaneous petitions if any pending in this criminal revision case shall also stand dismissed.

E.V.VENUGOPAL, J.

Date: 30.04.2024

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Yes / No

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