REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 722 OF 2015
(Arising from S.L.P. (Criminal) No. 6684/2013)

D. T. Virupakshappa ... Appellant (s)

Versus

C. Subash ... Respondent (s)

J U D G M E N T

KURIAN, J.:

Leave granted.

2. Appellant is the accused in a private complaint filed by the respondent/complainant before Civil Judge (Jr.Div) and JMFC at Chikkanayakanahalli, Karnataka, on which the learned Magistrate took cognizance, registered the case as C.C. No. 74/2009 and issued summons to the appellant. The case was registered under Sections 323, 324, 326, 341, 120, 114, 506 read with Section 149 of the Indian Penal Code (45 of 1860) (hereinafter referred to as 'IPC').

3. The appellant moved the High Court under Section 482 of The Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC'), which was declined by the impugned order.

4. The facts and reasons, as stated in the impugned order, read as follows:

> "6. A perusal of the averments in the complaint, sworn statement of the complainant and his witnesses go to show that the complainant was picked up from his garden land at about 10.00 a.m. on 6/6/2006 in the morning. Further averment reveals that this petitioner came to the police station later in the evening and detained him till 10.00 p.m. and also directed that he should not be let-out till he reveals or confesses that he is involved in the murder of one Sannamma. These allegations in the complaint are further corroborated in the sworn statement of the complainant which is further fortified from the sworn statement of his two witnesses, namely, PWs. 2 and 3. The Court at this stage is required to consider only the sworn statement of the complainant and his witnesses to come to a conclusion whether a prima facie case is made out for registering the case and issuing summons. It is not the stage for the Court to consider the defence of the accused as the same is well settled by the Apex Court as long as in the year 1976 in the case of Nagawwa Vs. V.S. Kojalgi reported in (1976) 3 SCC 736. In the present case, the allegation in the complaint, sworn statement of the complainant and his two witnesses clearly make out the offences alleged against the petitioner and other accused. If according to the petitioner, it is a false and fictitious complaint, it is for him to bring those materials when the said case is set down for hearing before charge before the learned Magistrate. It is too

premature at this stage to consider the case of the petitioner while looking into the material whether the prima facie case is made out or not as alleged by the complainant. …"

5. The main contention of the appellant is that the learned Magistrate could not have taken cognizance of the alleged offence and issued process to the appellant without sanction from the State Government under Section 197 of CrPC, and that on that sole ground, the High Court should have quashed the proceedings.

6. The question, whether sanction is necessary or not, may arise on any stage of the proceedings, and in a given case, it may arise at the stage of inception as held by this Court in **Om Prakash and others v. State of Jharkhand Through The Secretary, Department of Home, Ranchi 1 and another**[1]. To quote:

"**41.** The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. 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

[1] (2012) 12 SCC 72

> Section 197 of the Code. It is not possible for us to hold that in such a case, the court cannot look into any documents produced by the accused or the public servant concerned at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea. ...”

7. In the case before us, the allegation is that the appellant exceeded in exercising his power during investigation of a criminal case and assaulted the respondent in order to extract some information with regard to the death of one Sannamma, and in that connection, the respondent was detained in the police station for some time. Therefore, the alleged conduct has an essential connection with the discharge of the official duty. Under Section 197 of CrPC, in case, the Government servant accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, the previous sanction is necessary.

8. The issue of ‘police excess’ during investigation and requirement of sanction for prosecution in that regard, was also the subject matter of **State of Orissa Through Kumar**

Raghvendra Singh and others v. Ganesh Chandra Jew[2], wherein, at paragraph-7, it has been held as follows:

> "**7.** The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the

[2] (2004) 8 SCC 40

official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. ..."

(Emphasis supplied)

9. In **Om Prakash** (supra), this Court, after referring to various decisions, particularly pertaining to the police excess, summed-up the guidelines at paragraph-32, which reads as follows:

"**32.** The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (*K. Satwant Singh*). The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection (*Ganesh Chandra Jew*). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so

> integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood."
>
> (Emphasis supplied)

10. In our view, the above guidelines squarely apply in the case of the appellant herein. Going by the factual matrix, it is evident that the whole allegation is on police excess in connection with the investigation of a criminal case. The said offensive conduct is reasonably connected with the performance of the official duty of the appellant. Therefore, the learned Magistrate could not have taken cognizance of the case without the previous sanction of the State Government. The High Court missed this crucial point in the impugned order.

11. The appeal is hence allowed. The impugned order by the High Court is set aside, so also, the proceedings initiated by the Civil Judge (Jr.Div) and JMFC at Chikkanayakanahalli, Karnataka in C.C. No. 74/2009 taking cognizance and issuing process to the appellant. It is made clear that our judgment is only on the issue of sanction and we have not considered the matter on merits and that this judgment shall not stand in the way of respondent approaching the State

Government for sanction under Section 197 of CrPC. In case such sanction is obtained and the same is produced before the learned Magistrate, the Magistrate may proceed further in the case in accordance with the law.

.....J.
(ANIL R. DAVE)

.....J.
(KURIAN JOSEPH)

New Delhi;
April 27, 2015.

ITEM NO.1A COURT NO.4 SECTION IIB

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Criminal Appeal No(s).722 of 2015 @ SLP(Crl.) No. 6684/2013

D T VIRUPAKSHAPPA Appellant(s)

VERSUS

C SUBASH Respondent(s)

[HEARD BY HON'BLE ANIL R.DAVE AND HON'BLE KURIAN JOSEPH, JJ.]

Date : 27/04/2015 This appeal was called on for judgment today.

For Appellant(s) Mr. B. Subrahmanya Prasad,Adv.

For Respondent(s)

Hon'ble Mr. Justice Kurian Joseph pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Anil R. Dave and His Lordship.

For the reasons recorded in the Reportable judgment, which is placed on the file, the appeal is allowed. The impugned order by the High Court is set aside, so also, the proceedings initiated by the Civil Judge (Jr. Div) and JMFC at Chikkanayakanahalli, Karnataka in C.C. No. 74/2009 taking cognizance and issuing process to the appellant. It is made clear that our judgment is only on the issue of sanction and we have not considered the matter on merits and that this judgment shall not stand in the way of respondent approaching the State Government for sanction under Section 197 of Cr.P.C. In case such sanction is obtained and the same is produced before the learned Magistrate, the Magistrate may proceed further in the case in accordance with the law.

(Parveen Kr. Chawla) (Renuka Sadana)
Court Master Court Master