

(2020) 06 GAU CK 0027
In the Gauhati High Court
Case No : Criminal Petition No. 107 Of 2018

Bhabesh Chandra Biswas @ Bhupesh Biswas	APPELLANT
Vs	
State Of Assam And Anr	RESPONDENT

Date of Decision : 17-06-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 2(a), 41, 50A, 57, 157(1), 167, 167(1), 176, 197, 197(1), 200, 202, 482
Indian Penal Code, 1860 — Section 302, 342, 380, 511
Constitution Of India, 1950 — Article 14, 22(2), a227

Citation : (2020) 06 GAU CK 0027

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : M P Choudhury

Final Decision : Allowed

Judgement

1. This criminal petition under Section 482, Code of Criminal Procedure, 1973 (â??the Codeâ?? or â??the CrPCâ??, for short) read with Article 227

of the Constitution of India has been preferred seeking, inter-alia, quashing of the criminal proceeding of Complaint Case no. C.R. 198/2017 dated

20.05.2017, presently pending before the Court of learned Munsiff No. 1/Judicial Magistrate, 1st Class, Goalpara (â??the trial courtâ??, for short) and

the order dated 17.10.2017 whereby the learned trial court taking cognizance of the offences under Sections 342/302, Indian Penal Code (IPC), issued

process against the petitioner to stand the trial as the sole accused.

2. The primary contention of the petitioner herein who has been arraigned as the sole accused in Complaint Case no. C.R. 198/2017, is that the

learned trial court could not have taken cognizance of the offence and issued process against the petitioner (hereinafter also referred to as â??the

accusedâ??, at places, for easy reference) without there being any sanction for prosecution under Section 197 of the Code. The premise of such

challenge is that the accused was the Officer In-Charge of Rangjuli Police Station at the relevant point of time when the death of the son of the

complainant had occurred inside the lock-up of Rangjuli Police Station and by no stretch, the alleged offence can be said to be not connected with

discharge or purported discharge of the official duties of the accused.

3. Heard Mr. M.P. Choudhury, learned counsel for the petitioner and Ms. S. Jahan, learned Additional Public Prosecutor for the respondent no. 1,

State of Assam. Also heard Mr. N. Uddin, learned counsel for the respondent no. 2-complainant.

4. Mr. Choudhury, learned counsel for the petitioner by referring to the sequence of events that had unfolded till the order of taking cognizance and

issuing process by the learned trial court, has submitted that the accused is nowhere connected with the death of the son of the respondent no. 2-

complainant (hereinafter also referred to as â??the victimâ??, at places, for easy reference) as the death of the victim had occurred when the

accused was not in the Police Station. He has further submitted that the materials on record including the post-mortem examination report, clearly

demonstrate that the victim had committed suicide. In any view of the matter, even if it is assumed that the death of the victim was caused as a result

of assault inside the Police Station, as has been alleged by the complainant, then also no cognizance of the offence alleged could have been taken by

the trial court in absence of prosecution sanction under Section 197, CrPC as such act would come within the scope and ambit of the phrase -

â??acting or purporting to act in the discharge of his official dutyâ??, appearing in Section 197, CrPC.

5. Ms. Jahan, learned Additional Public Prosecutor has submitted that only issue that is to be considered is whether the alleged death had occurred

during the course of official duties of the accused and in so far as requirement of prosecution sanction is concerned, in the event it is held that the

alleged act had occurred when the accused had acted or purported to have acted in the discharge of his official duties then the question of acting in

excess of the official duties may be immaterial.

6. Mr. N. Uddin, learned counsel for the respondent no. 2-complainant

(hereinafter also referred to as "the complainant", at places, for easy reference) has submitted that what had been committed by the accused was beyond the purview of his official duties. He has further submitted that the learned trying Magistrate is not prohibited from taking cognizance of the offence even if the alleged act can be said to be connected with discharge or purported discharge of the official duties of the accused as such sanction for prosecution can be taken at a later point of time also.

7. I have given due consideration to the submissions of the learned counsel for the parties. I have also perused the materials on record including the materials available in the case record of Complaint Case no. C.R. 198/2017 and considered the decisions referred to by the parties.

8. To appreciate the rival submissions of the parties as regards the issue involved, it is found necessary to delineate the sequence of events from the period starting from 19.12.2016 to 17.10.2017.

8.1. It transpires that at around 8-30 p.m. on 19.12.2016, one Sri Niranjan Sarkar who had a grocery shop located in Rangjuli market, had left for his home to have meal. He returned to his shop after about half an hour. When he entered inside his shop, he saw the victim sitting on the godi (sitting place for the owner) of the shop and found the cash-box broken. He immediately raised alarm. Hearing his alarm, the nearby people from the market gathered at the place and apprehended the victim. On the allegation that the victim had attempted to commit theft, the people assembled there assaulted the victim in the process. The incident was informed to Rangjuli Police Station immediately.

8.2. As per General Diary Entry no. 358 dated 19.12.2016, registered at 9-00 p.m., one Sri Parag Das, son of Sri Jagat Das, Village " Rangjuli market had come to the Police Station and informed that when an unknown person tried to commit theft from the cash-box of their grocery shop located in Rangjuli market, his uncle, Sri Niranjan Sarkar and other shop owners had caught the said person red-handed and they were assaulting the said person inside the shop. The accused who was the Officer In-Charge of Rangjuli Police Station, on receipt of the said information, had made General Diary Entry no. 358 at 9-00 p.m. and thereafter, he along with one Sub-Inspector of Police, Sri N. Sarkar and other staff proceeded to the place of occurrence.

8.3. In the General Diary Entry no. 359 dated 19.12.2016, registered at 10-00 p.m., the facts in paragraph 8.1 hereinabove were mentioned. When the accused and his staff reached the place of occurrence, he found that the victim had sustained injuries. The victim was accordingly sent for medical examination to the nearest health centre with his staff. After medical examination, the victim was brought to the Police Station and he was kept inside the lock-up of the Police Station. On being interrogated, the victim had disclosed his name as Sanjay Das, son of Sri Ajit Das (i.e. the complainant), Village â?" West Matia, Police Station â?" Matia, District â?" Goalpara. It was recorded that effort would be made to inform the family members of the victim.

8.4. Thereafter, Sri Niranjan Sarkar arrived at the Police Station at 10-30 p.m. and had lodged an First Information Report (FIR). Apart from mentioning the facts stated in paragraph 8.1 hereinabove, it was stated that after arrival of the police, the victim was handed over to the police. It was further stated the victim had attempted to commit theft in the shop. In the FIR, the name and address of the victim had been mentioned as in paragraph 8.3 above and his age was stated as 24 years.

8.5. On receipt of the said FIR, the Officer In-Charge, Rangjuli Police Station i.e. the accused registered a case being Rangjuli Police Station Case no. 112/2016 for offences under Sections 380/511, IPC. Investigation was entrusted to one Sri Suren Baruah, Sub-Inspector of Police. The said Investigating Officer (I.O.) interrogated the victim and thereafter, the victim was arrested by the I.O.

8.6. The matter of arrest of the victim was informed to his family by a W.T. Message through the Officer In-Charge, Matia Police Station.

8.7. At about 4-30 a.m. on 20.12.2016, the victim was found dead inside the Police Station lock-up latrine.

8.8. In respect of the said death of the victim, the accused in the capacity of Officer In-Charge of the Police Station had lodged an FIR on 20.12.2016 stating that at 4-30 a.m. on 20.12.2016, the victim had committed suicide inside the Police Station lock-up by hanging. The said FIR was registered as Rangjuli Police Station U.D. Case no. 12/2016. The Investigation of the case was entrusted to the same Sub-Inspector of Police, who was the I.O. in connection with Rangjuli Police Station Case no. 112/2016.

8.9. On receipt of a report from the Officer In-Charge, Rangjuli Police Station i.e. the accused that the victim had died in the police custody of

Rangjuli Police Station at 4-30 a.m. on 20.12.2016, the District Magistrate, Goalpara by an order dated 20.12.2016 directed the Circle Officer &

Executive Magistrate, Rangjuli Revenue Circle to conduct a Magisterial inquiry into the matter under Section 176, CrPC and to cause inquest on the

dead body. The Superintendent of Police, Goalpara was directed to extend necessary assistance and cooperation. Direction was made to do

videography of inquest and post-mortem examination. The concerned Magistrate was directed to submit a report with findings within 30 days for

onward transmission to the National Human Rights Commission (NHRC) and the State Government.

8.10. The complainant, on 21.12.2016, had submitted a complaint before the Superintendent of Police, Goalpara against the Officer In-Charge,

Rangjuli Police Station for assaulting the victim. In the said complaint, it was stated that at about 9-00 p.m. on 19.12.2016 the police from Rangjuli

Police Station arrested his minor son, whose date of birth was 01.06.1999, on the basis of an FIR lodged by one Sri Jagat Das. It was alleged that by

entering into a conspiracy with the said informant, the Officer In-Charge of Rangjuli Police Station brought the victim to the Police Station and

thereafter, killed him in the lock-up of the Police Station by subjecting him to inhuman torture. A photocopy of the birth certificate of the victim was

stated to have been enclosed with the complaint.

8.11. The Superintendent of Police, Goalpara by forwarding the said complaint vide a communication dated 21.12.2016, directed the Officer In-

Charge, Rangjuli Police Station to register a case and to cause investigation. On receipt of the said complaint from the complainant, the Officer In-

Charge, Rangjuli Police Station treating the complaint as FIR, registered a case being Rangjuli Police Station Case no. 114/2016, for offences under

Sections 342/302, IPC on 22.12.2016. Correspondingly, a G.R. case being G.R. Case no. 2784/2016, had been registered.

8.12. The Circle Inspector of Police, Rangjuli Circle submitted a report before the Superintendent of Police, Goalpara on 29.12.2016. In the report, it

was mentioned that at 4-30 a.m. on 20.12.2016, the Home Guard on sentry duty at the Police Station informed the Officer In-Charge, Rangjuli Police

Station i.e. the accused that the victim had gone to the toilet inside the lock-up and since a long time, he had not returned. The Officer In-Charge

immediately came from his quarter to the Police Station and opened the grill door of the lock-up. It was found that the victim had hanged himself

inside the toilet door with a torn blanket rope. The Officer In-Charge cut the rope immediately to save the life of the victim but no movement of the

victim could be seen. The incident was accordingly informed to all the senior police officers of the district who visited Rangjuli Police Station and

instructed the Officer In-Charge to take all legal actions. The parents including the complainant, and other relatives of the victim arrived at the Police

Station and they were informed about the entire incident. The inquest report was prepared by the Circle Officer & Executive Magistrate, Rangjuli

Revenue Circle with video photography in presence of the parents and other relatives of the victim. After holding the inquest, the dead body was sent

to Goalpara Civil Hospital for post-mortem examination. A panel of doctors from Goalpara Civil Hospital conducted the post-mortem examination on

the dead body and thereafter, the dead body of the victim was handed over to his father i.e. the complainant at Goalpara Civil Hospital on 20.12.2016.

8.13. After completing his investigation in connection with Rangjuli Police Station Case no. 114/2016, the I.O. had submitted a final report being Final

Report no. 11/2017 on 30.04.2017. The I.O. therein had narrated the steps he had taken during the course of investigation. Apart from what have

already been stated above, it was stated that the rope made with a portion of blanket with which the victim committed suicide, was seized. The said

rope and the viscera, lung, liver, etc. of the victim were sent to the Forensic Science Laboratory (FSL) for examination. It was remarked that the post-

mortem examination report ascertained the cause of death and it was due to hanging which was confirmed finally by the forensic analysis report as

not having any evidence of poison. On the basis of the said final opinion, it was observed by the I.O. that the victim died as a result of hanging and he

was not murdered. From the materials collected by him, the I.O. did not find any evidence against the accused. The I.O. stated that the complainant

had mistakenly lodged the FIR but the case was not established against the accused. It was, thus, considered that the FIR was lodged due to

misunderstanding and by submitting the final report, the I.O. forwarded the same with the prayer to accept it and to discharge the accused named in

the FIR i.e. the accused-petitioner.

8.14. It is found that the I.O. had submitted a final report in connection with Rangjuli Police Station Case no. 112/2016 which was registered prior to

the death of the victim on the basis of the FIR lodged by Sri Niranjan Sarkar. A final report had also been submitted on 29.04.2017 in connection with

Rangjuli Police Station U.D. Case no. 12/2016.

8.15. On receipt of the Final Report no. 11/2017 in G.R. Case no. 2784/2016, the Court of learned Judicial Magistrate, 1st Class, Goalpara after

perusal of the same, by order dated 12.05.2017, issued notice to the complainant and to submit objection, if any. On receipt of the notice, the

complainant herein appeared before the Court of learned Judicial Magistrate, 1st Class, Goalpara on 20.05.2017 and submitted a protest petition

objecting to the Final Report no. 11/2017. On 01.06.2017, the said Court upon perusal of the materials in the protest petition, had observed that there

were materials to constitute offence under the penal law. The protest petition was accepted and the final report was rejected. The Court of learned

Judicial Magistrate, 1st Class, Goalpara ordered to register the same as a complaint case. Accordingly, Complaint Case no. C.R. 198/2017 had been

registered. By an order dated 07.06.2019, the learned Chief Judicial Magistrate, Goalpara transferred the complaint case to the Court of Sub-

Divisional Judicial Magistrate, Sadar, Goalpara for disposal.

8.16. Later on, by order dated 22.08.2017 of the learned Chief Judicial Magistrate, Goalpara, the said complaint case was transferred to the Court of

learned Munsiff No. 1/Judicial Magistrate, 1st Class, Goalpara (the trial court) for disposal. The complainant was examined under Section 200, CrPC

on 09.10.2017. Thereafter, the learned trial court examined 4 (four) other witnesses under Section 202, CrPC. Upon perusal of the complaint and

statements of the complainant and the witnesses, the learned trial court finding sufficient incriminating materials against the accused for offences

under Section 342/302, IPC, by its order dated 17.10.2017, took cognizance of the offences and ordered issuance of summons to the accused for his

appearance to stand the trial.

9. In the complaint, the complainant has, inter-alia, stated that the victim, on the date of his arrest on 19.12.2016, was a minor whose date of birth was

01.06.1999. The victim was arrested out of suspicion by the accused and

thereafter, he was detained in the lock-up of the Police Station. At about 12-00 mid-night, police personnel from Matia Police Station came to the house of the complainant and informed him that his son was detained in Rangjuli Police Station. In the following morning, while the complainant and his wife were making arrangements for going to Rangjuli Police Station they came to know about the death of their son in Rangjuli Police Station through a news broadcasted in the TV Channel, News Live.

Thereafter, the complainant accompanied by some people from the locality went to Rangjuli Police Station and met the Officer In-Charge of Rangjuli Police Station i.e. the accused. When he asked the accused about the cause of his son's death the accused said that his son had committed suicide. Out of suspicion, the complainant and the persons accompanying him took the victim out of the lock-up and removed his wearing apparels. They saw injuries on several parts on the body of the victim which, he alleged, were caused by assaults. They also saw marks of injury caused by assaults with shoes. They also noticed that one of the hands of the victim was fractured. The police sent the dead body of the victim to Goalpara Civil Hospital for post-mortem examination and after conduct of post-mortem examination, the police handed over the dead body to the complainant in his house. Thereafter, the complainant came to Goalpara and lodged an FIR in the office of the Superintendent of Police, Goalpara in connection with the incident. On the basis of the said FIR, Rangjuli Police Station Case no. 114/2016 was registered. It is alleged by the complainant that the accused was not arrested till then and no investigation was done against him. The complainant stated to have submitted an application before the Deputy Commissioner, Goalpara in respect of the matter but no action was taken on it. It is further alleged that the accused had paid huge amount of money to the doctors in Goalpara Civil Hospital and, thus, managed to get a post-mortem examination report wherein it was stated that the age of the victim was 24 years, instead of 17 years, and the cause of death was suicide, instead of murder. The accused had managed to conceal the actual truth of the incident. Though there were enough evidence against the accused, the I.O. had submitted a final report. If such a final report is accepted, the complainant has contended that the complainant would be deprived from getting justice and therefore, cognizance may be taken in the case and after

recording the statements of the witnesses, necessary orders may be passed against the accused.

10. Section 197 of the Code provides, inter-alia, for sanction of prosecution of public servants. The relevant parts of Section 197 of the Code read as

under :-

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.

11. The protection under Section 197 of the Code is given to protect public servants against institution of criminal proceedings for offences alleged to

have been committed by them while acting or purporting to act as public servants. It is to afford adequate protection and safeguard to ensure that the

public servants are not prosecuted for anything done by them in the discharge of their official duties without any reasonable cause and to protect them

from possible vexatious criminal prosecution.

12. At this stage, it is apt to refer to some of the decisions rendered in respect of Section 197 of the Code. A Constitution Bench of the Supreme

Court in the case of Matajog Dobey vs. H.C. Bhari, reported in AIR 1956 SC 4,4 had considered the scope and ambit of Section 197, CrPC. The

Constitution Bench has observed that 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. The arguments that firstly, Section 197, CrPC has vested an absolutely arbitrary power in the

Government to grant or withhold sanction at their sweet will and pleasure, and secondly, the legislature has not laid down or even indicated any guiding

principles to control the exercise of discretion, have been repelled. It has been

observed that there is no question of any discrimination between one person and another in the matter of taking proceeding 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. It is also observed that Section 197 of the Code is not violative of the fundamental rights of a citizen conferred under Article 14 of the Constitution of India. The Constitution Bench has further observed as under :

17. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. But the difference is only in language and not in substance. 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. No question of sanction can arise under Section 197, 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 merits. What we must find out 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 the official duty, though possibly in excess of the needs and requirements of the situation.

13. In *Pukhraj vs. State of Rajasthan*, reported in (1973) 2 SCC 701, the Supreme Court has observed as under :-

2. While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a

contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public 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 purported 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."

14. In *State of Orissa vs. Ganesh Chandra Jew*, reported in (2004) 8 SCC 40, the point involved was as there was excess during police investigation, whether the sanction for prosecution was an essential requirement. In that connection, the Supreme Court has observed as under :-

"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 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.â??

15. In the complaint lodged in the present case, the complainant has alleged that he was informed that his son had committed suicide inside the lock-up of the Police Station. But when he and other members of his family saw the dead body of the victim, they saw injuries on several parts of the body of the victim. According to the complainant and the witnesses, such injuries were caused by assaults. The complainant has alleged that they saw marks of injury caused by assaults with shoes. It was also noticed by them that one of the hands of the victim was fractured.

16. While the complainant has alleged assaults on the victim, thereby, seeking to implicate the accused for such assaults the post-mortem examination report had given an opinion that the cause of death of the victim was not murder but was suicide. Whether it was a case of murder or a case of suicide is a question of fact which can only be established after evidence are led by the parties during the course of a trial. Similarly, whether the victim was a minor, as has been claimed by the complainant, at the time of his death or he was about 24 years, as have been recorded by the I.O. and claimed by the accused, can only be ascertained during the course of a trial. Whether at the time of the death of the victim, the accused was in the Police Station or in his official quarter is also a question of fact which can be decided at the time of trial. Similarly, whether the victim had suffered

fracture in his hand due to assault by police personnel inside the Police Station or due to assault by public inside the shop is another question where a finding can be reached only after recording of evidence in that regard. There are other questions of fact in respect of which findings can only be reached after due examination, appraisal and appreciation of the evidence to be led by the parties in a full-fledged trial. It is not the function of this Court in exercise of its inherent jurisdiction to examine, appraise and appreciate the documents placed before it, at this stage, and to record a prima facie finding of facts by undertaking and embarking on an exercise on the genuineness, acceptability, etc. or otherwise of those averments and allegations. In this criminal petition, this Court is only concerned with the question as to whether without sanction for prosecution under Section 197 of the Code the trial court could have taken cognizance of the offence and issued process against the accused.

17. From the sequence of events, as have been delineated above, it has emerged that a police case being Rangjuli Police Station Case no. 112/2016, came to be registered at 10-30 p.m. on 19.12.2016. General Diary Entry no. 358, recorded at 9-00 p.m. on 19.12.2016, and General Diary Entry no. 359, registered at 10-00 p.m. on 19.12.2016, go to show that the victim was apprehended by the informant in Rangjuli Police Station Case no. 112/2016 viz. Sri Niranjan Sarkar and others from inside the shop of the said informant. It has further emerged that after being apprehended, the victim was beaten by the persons gathered at the place and he sustained injuries on his person. The accused on being informed, arrived at the place of occurrence and finding the victim in an injured condition, sent him to the nearest health centre for his medical examination. After such medical examination, the victim was brought to the Police Station. Thereafter, the FIR came to be lodged in a written form by Sri Niranjan Sarkar at 10-30 p.m. and the accused being the Officer In-Charge of the Police Station, registered a case being Rangjuli Police Station Case no. 112/2016. The case was registered for offences punishable under Sections 380/511, IPC. The investigation was entrusted to a Sub-Inspector of Police as the Investigating Officer (I.O.). The said I.O. interrogated the victim and thereafter, arrested the victim.

18. The offence of Section 380, IPC, that is, theft in dwelling house, etc. is attracted when one commits theft in any building, tent or vessel, which

building, tent or vessel is used as a human dwelling, or use for the custody of property and the offence is punishable with imprisonment of either

description for a term which may extend to 7 years, and shall be also liable to fine. Section 511, IPC provides for punishment for attempting to commit

offences punishable with imprisonment for life or other imprisonment.

18.1. As per Section 2(c) of the Code, 'cognizable offence' means an offence for which, and 'cognizable case' means a case in

which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant. As per

Section 2(a), CrPC, 'bailable offence' means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other

law for the time being in force; and 'non-bailable offence' means any other offence. Section 41, CrPC states that a police officer may arrest a

person involved in a cognizable offence, though the use of the word 'may' is indicative of the fact that a police officer is not bound to arrest in a

case which involves a cognizable offence. Section 157(1), CrPC has provided that a police officer shall investigate a case relating to a cognizable

offence and to take all necessary steps to cause investigation including measures for the discovery and arrest of the offender. Obligation is placed

under Section 50A of the Code on the police officer making any arrest to give the information forthwith regarding such arrest and place where the

arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the

purpose of giving such information.

18.2. The offence under Section 380, IPC is a cognizable and non-bailable offence. The nature of offence under Section 511, IPC is dependent on the

fact whether the offence attempted is a cognizable offence or a non-cognizable offence. Similarly, whether it is bailable or non-bailable is dependent

on the offence attempted by the offender. The complainant himself has stated in his complaint that the information regarding the arrest and place of

detention of the victim was intimated to him at about 12-00 mid-night at his house by police personnel from Matia Police Station. Thus, it cannot be

said from the above conspectus of events that the arrest of the victim by the I.O. in connection with Rangjuli Police Station Case no. 112/2016 is ex-

facie illegal and unjustified.

18.3. The provisions contained in Article 22(2) of the Constitution of India and Section 57, CrPC prescribe that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate. Thus, the initial period of custody of an arrested person till such arrested person is produced before a Magistrate is not in pursuance of any order of remand passed by Magistrate. Section 167(1), CrPC has provided that whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of 24 hours fixed by Section 57, CrPC and there are grounds for believing that the accusation or information is well founded, the Officer In-Charge of the Police Station or the police officer, of at least the rank of a Sub-Inspector, making the investigation shall have to transmit the arrested accused person to the nearest Judicial Magistrate. The Magistrate to whom an accused person is so forwarded can authorize the detention of the accused in such custody for a term not exceeding 15 days in the whole. There are other provisions in Section 167, CrPC which are not required to be dilated upon for the purpose of the issue in hand. But it is evident that the powers of remand given to a Magistrate become exercisable after an arrested accused person is produced before him in terms of Section 167(1), CrPC.

18.4. From the above provisions of the Code vis-À-vis the sequence of events unfolded from the discussion made above, it is evident that the death of the victim was caused within 24 hours of his arrest in respect of an allegation of his involvement in a cognizable and non-bailable offence. The period of 24 hours within which the victim was mandatorily required to be produced before a Magistrate did not expire till the time of his unfortunate death. Thus, it cannot be said that the detention of the victim inside the lock-up of the Police Station was unauthorized and unlawful.

19. Now the question arises is whether the sanction for prosecution under Section 197 of the Code is an essential requirement at the stage of taking cognizance or it may arise at a subsequent stage. From the long line of decisions, it can be said that the question whether sanction is necessary or not

may arise at any stage of the proceeding, and in a particular case, it may arise at the initial stage itself. Therefore, the question is to be examined on

the basis of the facts obtaining in each such case. In this connection, the following observations made by the Supreme Court in the Case of Om

Prakash and others vs. State of Jharkhand, reported in (2012) 12 SCC 72, are of relevance :

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. 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. 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.

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 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 concerned public servant 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?..?

20. In the Constitution Bench judgment in *Matajog Dobey* (supra), it has been observed as under :

20. The question may arise at any stage of the proceedings. 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 stage to stage. The necessity may reveal itself in the course of the progress of the case.

21. In this connection, the following observations made in the decision in *Sankaran Moitra vs. Sadhna Das*, reported in (2006) 4 SCC 584, are also of relevance :-

25. The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it

goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of

duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an

official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of

this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction,

people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution

can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and

the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication

itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get

over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High

Court was in error in holding that sanction under Section 197(1) was not needed

in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of the learned counsel for the complainant that this is an eminently fit case for grant of such sanction.â??

22. In the factual matrix obtaining in the case in hand, it is evident that the entire allegations of the complainant are in respect of excesses committed by police personnel, more particularly, the petitioner in connection with the investigation of a criminal case registered against the victim in the lock-up of Rangjuli Police Station where he was the Officer In-Charge at the relevant point of time. Even it is assumed that the alleged death of the victim inside the lock-up was caused due to assaults on him inside the lock-up that may amount to use of excess force by the police personnel while they were acting or purporting to act in the discharge of their official duties. That the incident of death of the victim in the police lock-up was directly connected with the discharge or purported discharge of the official duty of the petitioner is amply demonstrated from the sequence of events and the facts emerged therefrom. The alleged death of the victim is found reasonably connected with the performance of official duty of the petitioner as the Officer In-Charge of Rangjuli Police Station. Thus, necessity of sanction had arisen at the inception itself. Thus, from the foregoing discussion and in the light of the principles laid down in the decisions above in respect of requirement of prosecution sanction under Section 197 of the Code, this Court is of the considered view that the learned trial court could not have taken cognizance of the offence and issued process to the petitioner without grant of prosecution sanction by the State Government under Section 197 of the Code.

23. Resultantly, this criminal petition is allowed. The criminal proceeding initiated by the Court of learned Munsiff No. 1/Judicial Magistrate, 1st Class, Goalpara in Complaint Case no. C.R. 198/2017 against the petitioner and the order dated 17.10.2017 taking cognizance and issuing process to the petitioner as the sole accused are set aside and quashed. It is, however, made clear that observations made hereinabove are only on the issue of requirement of prosecution sanction under Section 197 of the Code and this Court has not considered the respective merits of the case. It is, thus, made clear that this judgment shall not be a bar for the complainant to approach the State Government for sanction to prosecute under Section 197,

CrPC and in case such prosecution sanction is accorded and is produced before the learned trial court, the learned trial court will be at liberty to

proceed further in the case in accordance with the law. There shall, however, be no order as to cost.