
(2009) 08 JH CK 0082
In the Jharkhand High Court

Birendra Prasad Singh and Udai Bhan Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Constitution of India, 1950 — Article 356
Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 193, 323, 34, 342

Citation : (2009) 08 JH CK 0082

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This is an application for quashing the order dated 22.6.2007 passed by S.D.J.M., Dhanbad in C.P. Case No. 526 of 2000 whereby and whereunder cognizance u/s 323, 342, 193 read with Section 34 of the IPC has been taken against the petitioners.

2. It is submitted by the petitioners that in the complaint petition it is alleged that the petitioners had obtained signature of complainant on seizure list. It is further submitted that the petitioners are police officers and they have obtained the signature of complainant, who is accused of Dhansar P.S. Case No. 274 of 2000, in course of investigation of the said case. Thus protection u/s 197 of the Cr.P.C. is available to the petitioners. It is submitted that since the cognizance has been taken without obtaining the sanction of State Government, therefore, the impugned order is illegal and cannot be sustained by this Court.

3. Learned Additional P.P. while opposing the aforesaid submission had submitted that Section 197 of the Cr.P.C. have no application in the instant case, because the petitioners had wrongfully detained the complainant and took his signature with a view to fabricate false evidence. It is also alleged that while doing so petitioners also assaulted the complainant, which is not the official duty of the petitioners. Hence the court below had rightly come to the conclusion that no

sanction is required.

4. Having heard the submission, I have gone through the record of the case. Sub-section (1) of Section 197 of the Code of Criminal Procedure reads as follows:

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:

[Provided that where the alleged offence was committed by a person referred to in Clause (b) during the period while a Proclamation issued under Clause (1) of Article 356 of the Constitution was in force in a State, Clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted]....

5. From bare perusal of the aforesaid provision, it is clear that sanction of Government required to prosecute only those public servants, who are removable from the service by the order of State Government. Thus Section 197 of Cr.P.C. clearly draws a line between public servants and when some lessor authority has by law or rule or order been empowered to remove a public servant, it can not be said that he is not removable save by or with the sanction of State Government. Thus, if under the service rules if an employee can be removed by the order of his superior authority without taking any approval from State Government, then sanction for prosecuting that employee is not necessary.

6. It is stated at paragraph No. 6 of this application that petitioner No. 1 is a Sub-inspector of Police. In the complaint petition it mentioned that petitioner No. 2 is also a Sub-inspector of Police. Services of Sub-inspector of police governed by Bihar Police Manual, which has been adopted in the State of Jharkhand under the provisions of Bihar Reorganization Act. Rule 824 of police manual prescribed the nature of punishment inflicted departmentally on a police officer of and below the rank of Inspector, which includes the punishment of dismissal & removal from service. Rule 825 empowers the officer who can impose punishment as prescribed under Rule 824. A plain reading of Rule 825 Sub-rule (C) and Appendix 84 of Police Manual will show that a Deputy Inspector General of Police has power to impose any of the punishment on Sub-inspector of police as prescribed under Rule 824. Thus the Sub-inspector of police is removable from

the service by the order of Deputy Inspector General of Police and for that purpose; he does not require any approval from State Government. Thus for prosecuting a Sub-inspector of police no sanction required u/s 197 of the Cr.P.C. My aforesaid view finds full support from the decision of Hon''ble Supreme Court in Nagraj Vs. State of Mysore, .

7. Under the aforesaid circumstance, I find no merit in this application. Accordingly, the same is dismissed.