

(1983) 03 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 5988-M of 1982

Gurcharan Singh, Executive Officer, Municipal Committee,
Patti.District Amritsar

APPELLANT

Vs

Sanjogta Rani

RESPONDENT

Date of Decision : 24-03-1983

Acts Referred:

Citation : (1983) AICLR 331 : (1983) 1 RCR(Criminal) 356

Hon'ble Judges : S.S.Dewan, J

**Advocate : K.R. Chowdhary, Inderjit Malik, Harbans Singh, Advocates for
appearing Parties**

Judgement

S.S. Dewan, J.

1. In this petition under section 482 of the Code of Criminal Procedure, 1973 (for short, the Code), Gurcharan Singh has sought quashing of the Criminal proceedings initiated by the respondent No. 1, through a complaint dated 19.5.1982 and in which the petitioner has been summoned by the trial Magistrate by his order dated August 2, 1982.

2. Without going into the details of the complaint, in substance the allegations therein amount to this that on receipt of a direction receipt the SubDivisional Officer (Civil), the petitioner being an Executive Officer (Civil) of the Municipal Committee, Garhshankar, directed removal of the encroachments from the busstand, Garhshankar. It is said that when the municipal staff went to clear the encroachments, certain persons concluding the respondent No. 1, misbehaved with the staff and assaulted them. Consequently the petitioner made a report to the SubDivisional Officer (Civil) regarding the said incident and also regarding the misbehaviour by Sanjogta Rani Nath the petitioner in the office of the Municipal Committee. On the allegation made by the petitioner, Criminal case FIR No. 162/81 under sections 353 379 and 506, Indian Penal Code, registered in Police Station Garhshankar against Sanjogta Rani respondent and her husband. The SubDivisional Judicial Magistrate, Garhshankar, discharged Sanjogta Rani but

charged her husband Vijay for the said offences. Smt. Sanjogta Rani then filed a complaint qua first petitioner under section 500, Indian Penal Code.

3. In this petition, the short question that falls for determination as to whether the Magistrate could take cognizance of the offence under section 506, Indian Penal Code, Without the prior sanction of the competent authority (in this case of the Government) on a complaint filed before him by the respondent Smt. Sanjogta Rani. The relevant portion of S. 197 of the Code is in the following terms :

"197 (1) when any person who is or was a Judge or a public servant nor removable from his office Save by or with the sanction of Government is accused of any offence alleged to be committed by him while acting or purporting to act in discharge of his official duty, no court shall take cognizance of offence except with the previous sanction :

(a)

(b) in the case of person who is employed or, as the case may be at the time of commission of the alleged offence of in connection with the affairs of a State of the State Government."

4. It is not disputed that if the offence is alleged to have been committed while acting or purporting to act in the discharge of office duties, the provisions of S. 197 of the Code, would be attracted and a prior sanction for the prosecution would be required. So the point that for consideration is as to whether any offence for which the sanction is sought to be prosecuted could be held to have been committed by him while acting or purporting to act in the discharge of his official duties. The petitioner is admittedly an Executive Officer of the Committee. It is one of the functions of the Executive Officer to remove illegal encroachments made by the public. In the present case on the action given by the SubDivisional Officer (Civil), the Executive Officer alongwith his staff went to the busstand Garhshankar and tried to remove the encroachment made by Smt. Sanjogta Rani and her husband. The action of the petitioner was clearly performed in the exercise of his official duty and, therefore, sanction under section 197 of the Code, for prosecution for the offence under S. 500, Indian Penal Code, is clearly called for. Accordingly the petition is allowed and the order of the trial Magistrate dated August 2, 1982, summoning the petitioner as an accused is set aside and the proceedings before him are quashed. It would however, be open to Smt. Sanjogta Rani to apply and obtain sanction for the prosecution of the petitioner from the competent authority in accordance with law, if so advised.