

(2020) 08 CHH CK 0014

In the Chhattisgarh High Court

Case No : Criminal Misc. Petition No.2370 Of 2018

Rajesh Singh Rana

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 05-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 190, 190(1)(b), 193, 195, 197, 197(1), 210, 482

Indian Penal Code, 1860 — Section 21, 34, 306

Citation : (2020) 08 CHH CK 0014

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Rajeev Shrivastava, Mateen Siddiqui, Saurabh Dangi

Final Decision : Allowed

Judgement

@JUDGMENT-JUDGMENT

Sanjay K. Agrawal, J

1. Proceedings of this matter have been taken-up for final hearing through video conferencing.

2. Morgue No.34/2012 was registered in Police Station Narayanpur in which it was mentioned that one R.P. Soni, Executive Engineer, Rural

Engineering Services committed suicide by pouring kerosene oil on his body and setting himself ablaze. The case was investigated by the jurisdictional

police and ultimately, closure report was submitted before the jurisdictional Magistrate, but the Magistrate did not accept the report and on 14-1-2016

directed for further investigation on certain points and thereafter, investigation / final report was submitted. This time, by order dated 6-11-2017, the

Chief Judicial Magistrate, Narayanpur directed for taking cognizance of the

offence under Section 190 of the CrPC for the offence punishable under Section 306 read with Section 34 of the IPC against the following persons: -

1. Petitioner Rajesh Singh Rana being Chief Executive Officer, Zila Panchayat, Narayanpur;
2. Madan Lal Nag, Technical Coordinator, Zila Panchayat, Narayanpur;
3. Contractor Gautam Kumar Jain; and
4. Mukesh Kumar Jain.

The Chief Judicial Magistrate took cognizance of the above-stated offences under Section 190 of the CrPC against the aforesaid persons finding that

there is sufficient ground for proceeding against them and also directed for issuance of summons to the petitioner and also directed for committal of

the case to the Court of Session for trial against the accused persons.

3. Being aggrieved against the said order, Rajesh Singh Rana preferred a revision petition before the revisional Court which was dismissed by the

learned Sessions Judge, Kondagaon by order dated 23-7-2018 against which this petition (Cr.M.P.No.2370/2018) under Section 482 of the CrPC has

been preferred stating inter alia that the order taking cognizance as well as the revisional order is contrary to the provisions contained in Section 197 of

the CrPC and no offence under Section 306 of the IPC is made out against him and therefore the petition be allowed.

4. Return has been filed by the State and the complainant as well opposing the averment made in the petition stating inter alia that the learned trial

Magistrate has rightly taken cognizance of the offence against the petitioner and no case is made out for interference in the order taking cognizance

dated 6-11-2017 as well as in the revisional order passed by the learned Sessions Judge.

5. Mr. Rajeev Shrivastava, learned counsel appearing for petitioner, would submit that the trial Magistrate committed a grave legal error in taking

cognizance under Section 190 of the CrPC ignoring the fact that the present petitioner is a member of Indian Administrative Service (IAS) and

without having prior approval of the Central Government, offence under Section 306 read with Section 34 of the IPC could not have been taken

cognizance of, as the petitioner can be removed from service only by the Central Government and therefore competent authority to grant sanction is

the Central Government. He would further submit that the petitioner was performing his duty strictly in accordance with law, therefore, for taking cognizance of the offence, prior approval of the Central Government under Section 197 of the CrPC was absolutely necessary. He would also submit that even otherwise, taking the contents of the FIR as it is, no offence under Section 306 of the IPC is made out against the petitioner and thus, on both the counts i.e. on the point of Section 197 of the CrPC as well as also on the merits of the charges, the order impugned as well as the order dated 6-11- 2017 deserves to be set aside and the petitioner deserves to be discharged from the offence under Section 306 of the IPC.

6. Mr. Mateen Siddiqui, learned Deputy Advocate General appearing for the State, would submit that petitioner Rajesh Singh Rana is a member of IAS and his appointing authority is the Central Government, but the order of the learned Magistrate and that of the revisional Court are supportable and are in accordance with law. He would further submit that offence under Section 306 read with Section 34 of the IPC is made out against the petitioner.

7. Mr. Saurabh Dangi, learned counsel appearing for complainant Smt. Sarina Soni, would submit that prima facie offence under Section 306 of the IPC is made out against the petitioner and therefore the trial Magistrate is absolutely justified in making offence under Section 190 of the CrPC, though the point of sanction is not considered, but sanction is not at all required in this case.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

9. By order dated 6-11-2017, the learned Magistrate directed for taking cognizance of the offences under Section 190(1)(b) of the CrPC for the offence punishable under Section 306 read with Section 34 of the IPC and also directed the case to be committed to the Court of Sessions. It is quite vivid that the petitioner is a member of Indian Administrative Service (IAS) and he is not removable from his post except by the sanction of the Central Government, but the learned Magistrate did not consider the applicability of Section 197 of the CrPC. However, the learned Sessions Judge declined to deliberate on the issue holding that such a question of sanction or

applicability of Section 197 of the CrPC has not been raised before the learned Magistrate leading to filing of these petitions before this Court. At this stage, it would be appropriate to notice Section 190(1)(b) of the CrPC which states as under: -

190. Cognizance of offences by Magistrates.--(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence--

(a) xxx

(b) upon a police report of such facts;

(c) xxx

(2) xxx

10. Similarly, Section 197(1) of the CrPC states 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:

xxx

xxx

xxx

11. The aforesaid provisions contained in Section 197 of the CrPC embodies one of the exceptions to the general rule laid down in Section 190, that

any offence may be taken cognizance of by the Magistrate enumerated therein. Sections 193 and 195 to 199 of the CrPC regulate the competence of

the Court and bar its jurisdiction in certain cases excepting in compliance

therewith.

12. The object of Section 197 of the CrPC is to guard against vexatious proceedings against public servants and to secure the well-considered opinion

of a superior authority before a prosecution is launched against them. (See R.R. Chari v. State of Uttar Pradesh AIR 1962 SC1573.) However, before

Section 197 can be pressed into service, following two conditions must be satisfied:-- (1) the accused must be a public servant of the kind mentioned in

the section i.e., he must be a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the State

Government or Central Government; and (2) the offence must be committed by the accused while acting or purporting to act in the discharge of his

official duty. (See Madanraj v. Jalamchand Lodha AIR 1960 SC 745.)

13. Use of words 'no' and 'shall' in Section 197 of the CrPC make it abundantly clear that bar on power of a Court to take cognizance of any offence

without prior sanction is absolute and complete. (See State of Maharashtra v. Dr. Budhikota Subharao (1993) 3 SCC 339 and State of Himachal

Pradesh v. M.P. Gupta AIR 2004 SC 730.)

14. Likewise, 'previous sanction' means sanction to prosecute has to be accorded by the appropriate Government prior to taking of cognizance of

offence.

15. The question of want of sanction goes to the root at the jurisdiction of the Court and therefore the Court should consider at the earliest possible

stage, whether such sanction under this provision is in law necessary and if it is, whether it has duly given, and it should express a definite opinion on

the question. There is no requirement that an accused should wait for taking a plea that cognizance has been taken without previous sanction or he

should wait till charges are framed. Accused can take a plea immediately after cognizance is taken and process is issued.

16. Where accused is a public servant under Section 21 of the IPC and in view of the provisions of Section 197 of the CrPC, no cognizance could be

taken by Magistrate before deciding the question as to whether sanction of Government was necessary before taking such cognizance and the trial

Magistrate is bound to consider this aspect in his summoning order.

17. The Supreme Court in the matter of Sankaran Moitra v. Sadhna Das and another (2006) 4 SCC 584 has emphasized that a prosecution hit by

Section 197 of the CrPC cannot be launched without the contemplated sanction. In paragraphs 11 and 22 of the report it has been held as under: -

11. We find that even if we were to accept the submission of learned counsel for the complainant that the stage is not reached for considering

whether sanction under Section 197(1) of the Code of Criminal Procedure is required in the present case or not, it would only be postponing the

consideration of that question. As we have noticed earlier, in his application filed before the Chief Judicial Magistrate invoking Section 210 of the Code

of Criminal Procedure and praying for a stay of further proceedings, the appellant, has pleaded that the act was done by him in performance of his

duty and in the application filed under Section 482 of the Code of Criminal Procedure before the High Court in addition to reiterating that the alleged

offence was committed by him in the course of performance of his duty, he had also invoked Section 197(1) of the Code of Criminal Procedure and

had pleaded that the proceedings cannot go on and would be without jurisdiction for want of sanction under Section 197(1) of the Code of Criminal

Procedure. Of course, the High Court has taken the view that the complaint would not attract Section 197(1) of the Code and that was the reason for

rejecting the prayer of the appellant to quash the proceedings as being without jurisdiction for want of sanction. Learned counsel for the complainant

has made a submission that the whole investigation was being delayed and the whole process was being delayed in view of the fact that the accused

involved were police personnel and the State was more interested in protecting them than in having justice done. When we take note of this

submission, postponing a decision on the applicability or otherwise of Section 197(1) of the Code can only lead to the proceedings being dragged on in

the trial court and a decision by this Court, here and now, would be more appropriate in the circumstances of the case especially when the accused

involved are police personnel and the nature of the complaint made is kept in mind.

22. Learned counsel for the complainant argued that want of sanction under Section 197(1) of the Code did not affect the jurisdiction of the Court to

proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate time. We are not in a

position to accept this submission. Section 197(1), its opening words and the object sought to be achieved by it, and the decisions of this Court earlier

cited, clearly indicate that a prosecution hit by that provision cannot be launched without the sanction contemplated. It is a condition precedent, as it

were, for a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at the inception,

but even at a subsequent stage. We cannot therefore accede to the request to postpone a decision on this question.

18. Reverting to the facts of the present case in the light of the principles of law flowing from the aforesaid judgments rendered by their Lordships of

the Supreme Court, it is quite vivid that though the petitioner is not removable from the office save by or with the sanction of the Central Government,

yet the learned Magistrate even did not deliberate on the issue as to whether sanction under Section 197 of the CrPC is required or not before taking

cognizance of the offence, as it is the case of the petitioner (Rajesh Singh Rana) that being Chief Executive Officer, Zila Panchayat, Narayanpur, at

the relevant point of time, he has no role in the said offence and he has unnecessarily been involved and being dragged, as such, the learned

Magistrate was required to consider the applicability of Section 197 of the CrPC before taking cognizance of the offence under Section 190(1)(b) of

the CrPC for the aforesaid offences against the petitioner. The learned Magistrate was required to decide whether the act which is done or omitted to

be done by the petitioner / public officer requires sanction under Section 197 of the CrPC, if so, the officer will be protected and leave under Section

197 of the CrPC would be necessary, however, if it is alleged that it is not in official capacity, the officer will not be protected, but the learned

Magistrate has omitted to consider the applicability of mandatory provision of Section 197 of the CrPC before taking cognizance of the aforesaid

offence under Section 190(1)(b) of the CrPC. The revisional Court also omitted to consider the plea that such a plea has not been raised before the

learned Magistrate, rather missed the point that at the time of taking cognizance of the offence before the learned Magistrate, the petitioner was not

represented and he was not noticed and after issuing summons, he filed revision questioning that order. Consequently, the order passed by the learned

Magistrate dated 6- 11-2017 qua the petitioner and the order of the revisional Court dated 23-7-2018, both are set aside and the matter is remitted to

the learned Magistrate to pass fresh order in accordance with law qua the petitioner only. It is made clear that this Court has not expressed any

opinion about the merits of the matter and has not expressed any opinion about other co-accused.

19. The petition is allowed to the extent indicated herein-above.