

**(2009) 04 RAJ CK 0052**  
**In the Rajasthan High Court**

Shailendra Singh and Others

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

---

**Date of Decision :** 23-04-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 190, 193, 197, 200, 202

Penal Code, 1860 (IPC) — Section 147, 323, 342, 365, 448

Wild Life (Protection) Act, 1972 — Section 27, 35, 39, 49, 50

**Citation :** (2009) 04 RAJ CK 0052

**Hon'ble Judges :** S.P. Pathak, J

**Bench :** Single Bench

**Final Decision :** Allowed

---

## Judgement

S.P. Pathak, J.—In this criminal misc. petition u/s 482 Cr.P.C. challenge has been made to the order dated 21st July, 2000 passed by the Special Judge, SC/ST Cases, Sawai Madhopur in Criminal Revision No. 99/2000 (41/1999) whereby the revisional court has up-held the order dated 25.2.1999 passed by the Chief Judicial Magistrate, Sawai Madhopur in Criminal Case No. 102/1996 (Nanha Khan v. Shailendra and Ors.) by which the trial court framed charge against the petitioners for offence under Sections 147, 448, 323, 342 and 365 IPC.

2. For the disposal of the present misc. petition, the necessary facts are that non-petitioner Nanha Khan son of Habibullah submitted a complaint in the court of Chief Judicial Magistrate, Sawai Madhopur on 23rd February, 1996 against the petitioners and one Shri Ram Swaroop Bairwa against whom proceedings were dropped by the trial court vide order dated 20th April, 1998 with the averments that on 22nd February, 1996 at about 3-4 p.m. while he was cooking meat in a "degchi" (utensil), at that time accused-petitioners along with other persons came in a canter and entered in his house without there being any permission and without there being any warrant of arrest they arrested the accused and seized the meat which was being cooked in the degchi. One of the petitioner Bharat Singh caused injuries by "danda" on his hips and other petitioners also

gave him beating and he was kept in custody for the whole night and ultimately was released on bail by the court on the next day. The learned trial court on the basis of above complaint took cognizance of the matter. After recording the statement of the complainant Nanha Khan u/s 200 Cr.P.C. and other witnesses u/s 202 Cr.P.C. framed charge against the petitioners under Sections 147, 448, 323, 342 and 365 IPC on 25th February, 1999. The petitioners feeling aggrieved against the order of framing charge, filed a revision petition which was decided by the learned Special Judge, SC/ST Cases, Sawai Madhopur on 21st July, 2000 holding therein that the order of framing charge was legal, just and proper and no protection was available to the accused-petitioners u/s 197 Cr.P.C. Hence, this petition has been filed.

3. I have heard learned Counsel for the petitioners, learned public prosecutor as well as the learned Counsel for the respondent-complainant.

4. It is relevant to mention here that the complaint was filed by the non-petitioner after registering of one FIR No. 293- 38/1996 on 22nd February, 1996 for committing offence under Sections 9 , 27 , 35 , 39, 49 read with 51 of the Wild Life Protection Act, 1972 (in short to be referred as, "Wild Life Protection Act"). On the above FIR after investigation, complaint was filed and petitioners are facing trial. In the above FIR, the allegations were to the effect that non-petitioner Nanha Khan was involved in poaching and on 22nd February, 1996 a report was received from the Regional Forest Officer that non-petitioner was engaged in poaching and after killing a Sambher its meat was being cooked at his residence. The petitioners, who are officers of the Forest Department, raided the house of the respondent-complainant and on finding that the meat was being cooked, that was seized, the complainant was arrested, search of the house was taken and ultimately a complaint was filed by the forest department. A charge was framed against the complainant under the provisions of the Wild Life Protection Act. In the above back-ground it is to be seen as to whether on the basis of complaint filed by Nanha Khan, the petitioners against whom cognizance has been taken and charge has been framed, had any protection available u/s 197 Cr.P.C.

5. It has been the contention of the learned Counsel for the petitioners that the petitioners being the officials of the forest department on receiving information raided the house of the complainant and it was found that the complainant who was engaged in illegal activities of poaching of forest animals and on 22nd February, 1996 he was found cooking the meat of Sambher and was arrested and search of the house was taken then it cannot be said that the petitioners had no protection available to them u/s 197 Cr.P.C. It is contended that merely on the basis of allegations made by the complainant that he was beaten and some injuries were caused on his person, it cannot be said that no protection was available to the petitioners as at the relevant time when the complainant was arrested, the petitioners were discharging official duty and on investigation it was found that the complainant committed offence then in such circumstance, the

courts below were required to dismiss the complaint in the absence of proper sanction. It is contended that as per provisions of Section 50 of the Wild Life Protection Act, the petitioners had all authority to enter into the house of the complainant and to search the house and also they had a right to seize the meat which was being cooked by the complainant.

6. On the other hand, it has been contended that the learned trial court has considered the statement of complainant and other witnesses and thereafter cognizance was taken and charge was framed, therefore, it cannot be said that for the illegal acts committed by the petitioners they will also be protected in view of the provisions contained in Section 197 Cr.P.C.

7. I have carefully considered the above submissions and also perused the material available on file.

8. In the instant case, the point for consideration is, as to whether in the absence of sanction for prosecution whether the charge framed against the accused-petitioners by the trial court vide its order dated 25th February, 1999 is liable to be set aside?

9. In the case of State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew, the Hon''ble Apex Court considered the matter similar to the present one where the grievances were made against six officers of the Orissa State Forest Department that they falsely implicated the complainant in the case for committing an offence under the Orissa Forest Act, 1972 and false recovery was made from the complainant of elephant tusks. The Hon''ble Apex Court finding that complaint in the case was filed, the complainant was produced before the Magistrate and after couple of days he filed a complaint, the protection to the officers of the forest department because they acted in discharge of their official duties was available, therefore, continuance of proceedings by way of prosecution was an abuse of the process of law. It shall be relevant to refer here that the Law Commission in its 41st report in paragraph 15.123 while dealing with Section 197, as it then stood, observed "it appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant".

10. In the case of Rakesh Kumar Mishra Vs. The State of Bihar and Others, , the Hon''ble Supreme Court in para 9 observed thus:

The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is, if the conditions mentioned are not made out or are absent

then no prosecution can be set in motion. For instance no prosecution can be initiated in a Court of Sessions u/s 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or unless the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his knowledge that such offence has been committed. So far public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint, cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty.

11. At this juncture, it shall be relevant to refer Section 197 Cr.P.C. which reads thus:

197. (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 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.

\* \* \*

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous

sanction of the Central Government.

12. After carefully examining the law laid down by the Hon<sup>ble</sup> Apex Court and the provisions contained in Section 197 Cr.P.C., it appears that the petitioners are officers of the forest department and they were entitled to arrest and detain the complainant on receiving information that he was engaged in poaching business and when his house was raided he was found cooking meat of forest animal, then in the above factual scenario on filing complaint against the petitioners, the question regarding applicability of Section 197 Cr.P.C. becomes relevant. The factual scenario indicates that on the alleged day of incident, the complainant was arrested and was subsequently released on bail by the court and is facing trial. In the statement of complainant and in the entire complaint not even a single word has been stated that the petitioners had any grievance against the complainant to falsely implicate him in a false case. The complaint was filed subsequently in time and it appears that when the complainant was arrested and a case was made out against him and the complaint was filed against him then after due consultation a complaint against the petitioners was filed. There does not appear any malafides on the part of the petitioners to show that the complainant could be falsely implicated in the case.

13. In view of above stated factual aspect of the matter, I am of the opinion that though the power u/s 482 Cr.P.C. has to be exercised in rare cases but at the same time when it appears to the court looking to the facts of the particular case that continuance of prosecution is nothing but abuse of the process of law then the court should exercise its inherent powers in the interest of justice. There remains no doubt in my mind that the petitioners were duty bound to verify the information of finding the complainant involved in poaching activities and on the day of incident was found cooking meat of forest animal (Sambher), that was seized and subsequently complaint was filed which does not appears to have been filed with oblique motive, therefore, the petitioners who are public servants are entitled to protection u/s 197 Cr.P.C.

14. In view of the fore-going discussion, the petition is liable to be allowed.

15. In the result, this criminal misc. petition is allowed. The order dated 21st July, 2000 passed by the Special Judge, SC/ST Act Cases, Sawai Madhopur in Criminal Revision No. 99/2000 (41/1999) upholding the order dated 25th February, 1999 passed by the Chief Judicial Magistrate, Sawai Madhopur in Criminal Case No. 102/1996 is set aside and the criminal proceedings pending therein stand quashed.