

2021 PLRonline 5004 (Gau.)

GAUHATI HIGH COURT

Before: Mrs. Justice Rumi Kumari Phukan

AMARJYOLTI GOGOI and others – Petitioners,

Versus

THE STATE OF ASSAM and another – Respondents.

Crl.Pet./799/2019

Criminal Procedure Code, Section 197 - Plea that petitioners, being the Government employees / Police men, were discharging their duties in the Police Station - One who claim for protection under Section 197 CrPC, has to bring on record that the public servant was discharging his official duty and the acts complained of, is related to his official duty - The purported act conducted by the petitioners being public servant in fabricating documents cannot be co-related with their public duty - Prima facie case made out that the accused-petitioners have indulged in conspiracy with the private person to prepare false document to deprive a person from the possession of immovable property - By no stretch of explanation the purported act of the petitioners will come within the purview of official duty and only because they are in the police station with their uniform, they cannot take the shield the uniform to protect their unlawful conduct - Prayer for quashing the proceeding / discharge for non-obtaining sanction under Section 197 CrPC, dismissed. [Para 25, 26]

JUDGEMENT AND ORDER (CAV)

Rumi Kumari Phukan, J. - *(Date of hearing: 05.10.2021 and Date of judgment: 30.11.2021)* – Heard Mr. S Borthakur, learned counsel, appearing on behalf of the petitioners as well as Mr. P.S Lahkar, learned Addl. P.P., Assam, appearing for the State/respondent No.1. Mr. R. De, learned counsel appears for the respondent No.2/complainant.

2. The petitioners herein preferred the present petition under Section 482 CrPC for quashing the entire proceeding pertaining to C.R. Case No.78/2017 under Sections 347/ 348/ 566/ 384/ 34/120(B) IPC including the order of taking cognizance dated 03.11.2017 and the order dated 13.09.2019 whereby the court has rejected the petition filed under Section 197 CrPC.

3. The brief facts that can be recapitulated from the record is that the respondent no.2 Prafulla Bhuyan, as complainant lodged a complaint before the learned CJM, Jorhat contending, inter alia that he purchased a plot of land of 5 Lecha covered by P.P. No.36 Dag No.485 Bongali Plot under Uttar Teok Mouza from one Bhakta Ch. Bora in lieu of some

consideration and possessing the same since long and the respondent no.2/complainant also received compensation from the Government at the time of widening the National Highway.

Suddenly, on 29.05.2017, one police officer from Teok Police station came to his residence and asked him to visit the police station at the earliest. Accordingly, as a duty bound citizen, he went to police station and found three police officials, Amarjyoti Gogoi, Gopal Doley and Romesh Oza there. Out of nowhere, the police officials asked him to vacate the land he possessed otherwise he was threatened to face dire consequences. They also offered Rs.10,000/- for vacating the land and otherwise threatened to raise false non-bailable cases against him. Thereafter, he left for his house with one of the police constable. On the next day, on 01.06.2017, in his absence, the aforesaid police officials came to his house and unturned all the valuable articles of his house, resulting damage of various articles. They also used filthy language to his wife and threatened her of dire consequences if they do not comply with the instructions given by them. Then, again on 02.06.2017, the accused Amarjyoti and Gopal Doley came to his house and forcibly took him to the police station where he found the actual pattadar of the land, Punaram Bora who instigated police to harass respondent no.2/complainant to compel him to vacate the land, as he could not collect the entire compensation. The police personnel acted as per his instructions.

4. Thereafter, those police officials illegally confined him inside the lockup and forced him to enter into an agreement for vacating the land possessed by him. Knowing about the matter, his son Dadul Bhuyan arrived at the police station and seeing the miserable condition of his father, he drafted an agreement in vernacular as threatened by the police officials. Out of fear, the complainant signed the agreement. Thus, it is alleged that all the accused persons by hatching conspiracy has harassed the respondent no.2/complainant and forced him to sign the agreement to vacate the land in favour of Punaram Bora.

5. The learned trial court examined the complainant as well as other witnesses under Section 202 CrPC and thereafter took cognizance of the offence and summoned all the accused persons including the present respondent no.2/complainant to face the trial. Accordingly, they appeared before the court and enlarged on bail. As the case was of warrant procedure, the court examined five witnesses before charge was framed reserving their cross-examination. At this stage, the accused petitioners filed a petition under Section 197/227 CrPC, praying for discharge for non-obtaining sanction under Section 197 CrPC. It was pleaded that the entire occurrence took place inside the police station and they are discharging their official duty and hence entitled for protection under Section 197 CrPC. The learned trial court after hearing both sides, rejected the prayer vide order dated 13.09.2019 and thereafter when the case was fixed for consideration of charge, has preferred the present petition challenging the order dated 13.09.2019 and the entire proceeding by way of the present petition.

6. According to the petitioners, they being the Government employees were discharging their duties in the Teok Police Station. It is stated that on 01.06.2017, Punaram Bora lodged a complaint before the O/C, Teok P.S. contending inter alia that one Prafulla Bhuyan @

Nalia has encroached upon a plot of myadi patta land in the Teok Town and in spite of issuance of notice from the concerned authority to vacate the land, said Prafulla Bhuyan instead of vacating the land, is trying to encroach another land. On receipt of the said complaint, G.D. Entry No.10 dated 01.06.2017 was made. On the basis of said complaint, the petitioners visited the house of said Prafulla Bhuyan i.e. respondent no.2 to enquire about the matter and he was asked to visit the police station. On 02.06.2017, when the respondent no.2/complainant appeared before the police station, the complainant Punaram Bora was also present there and on interrogation, both the parties decided to settle the matter amicably. As a result, respondent no.2/complainant signed an agreement declaring that he would vacate the land of Punaram Bora within five days and no dispute shall be raised in future regarding the land and the same was addressed before the O/C, Teok P.S. Thereafter, said Punaram Bora also informed in writing that he intends to withdraw the complaint dated 01.06.2017 against the respondent. The respondent no.2/complainant instead of vacating the land, pursuant to their agreement dated 02.06.2017, had filed the complaint on 08.06.2017 before the learned CJM, Jorhat bringing false allegations (as narrated in the complaint).

7. It is the contention of the petitioners that they being the police officials, interrogated the complainant/ respondent no.2 on the basis of the complaint filed by Punaram Bora vide G.D.E No.10 dated 01.06.2017 and they were discharging their duty while the parties entered into an agreement. It is contended that the entire complaint is based on false and fabricated story.

8. Further, it is submitted that Section 197 of the CrPC protects the public servant from vexatious prosecution for any act alleged to have committed while acting or purporting to act to discharge of his official duty. The provision under Section 197(3) empowers the State Government to apply the provision of Section 197(2) CrPC. Moreover, as per Government Notification No.HMA.280/ 88/41 dated 29.05.1990 issued under the signature of Secretary to the Government of Assam, Home Department, the members of police officials who were deployed for maintenance of law and order duty, the provision of Section 197(2) CrPC will be applicable. Accordingly, it has been submitted that the learned trial court has committed gross illegality while taking cognizance against the police officials under Section 347/348/166/384/34 IPC without obtaining sanction from competent authority and has prayed for setting aside the orders dated 03.11.2017 as well as 13.09.2019 to quash the entire proceeding pertaining to C.R. Case No.78/2017.

9. Reiterating the content of the petition, Mr. S. Borthakur, the learned counsel appearing for the petitioners has contended that the complainant has filed the case by suppressing the complaint filed by Punaram Bora, on the basis of which G.D. Entry No.10 dated 01.06.2017 was made and the petitioners were discharging their duty as public servants at the time of investigating the matter by interrogating the complainant/respondent no.2 while executing the agreement between the parties. The petitioners herein are entitled to get the protection under Section 197 CrPC and cognizance is barred against the police officials on duty.

In support of his contentions, the learned counsel for the petitioners has relied following

decisions:

- AIR 1956 SC 44, *Matajog Dobey v. H.C.Bhari*;

(2) (2012) 6 SCC 228, *General Officer Commanding, Rashtriya Rifles v. Central Bureau of Investigation and Anr.*;

(3) (2006) 4 SCC 584, *Sankaran Moitra v. Sadhna Das and Anr.*;

(4) (2020) 7 SCC 695, *D. Devaraja v. Owasis Sabeer Hussain*;

(5) 2021 (4) GLT 324, *Tulumoni Duarah v. State of Assam & Ors.*;

(6) AIR 2019 SC 2390, *Birla Corporation Limited v. Adventz Investments and Holdings Limited and Ors.*;

(7) (1998) 5 SCC 749, *Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors. and*

(8) 2017 (5) GLT 854, *XXX v. In RE.: State of Assam.*

10. The learned counsel for the State has vehemently opposed the contention raised by the petitioners that considering the nature of accusation and the involvement of the accused in preparing the agreement in most illegal manner (as per the complaint), it cannot be said that such an affair was conducted in discharge of official duty. The incident disclosed in the complaint itself constitute a prima facie case as against the petitioners that they have misused the power by hatching a conspiracy with the private person, thus, compelling the complainant to sign the agreement to vacate the land. It is, accordingly, submitted that the respondent no.2/complainant has prima facie made out a case against the petitioners and there is no illegality in the order of taking cognizance and rejecting the petition under Section 197CrPC.

11. Relying on a decision *Rajib Ranjan v. R. Vijaykumar*, (2015) 1 SCC 513 and Criminal Appeal No.129/2013 dated 13.04.2015 (*Inspector of Police v. Battenapatla Venkata Ratnam* .), it has been submitted that the provision of Section 197 CrPC will not be attracted if at the time of discharging official duties a public servant entered into conspiracy or indulges in criminal misconduct, the same cannot be treated as an act in discharge of the official duties. It is not an official duty of a public servant to abrogate false agreement in collusion with private person.

12. The principle laid down in *Prakash Singh Badal v. State of Punjab and Ors.*, [(2015) 1 SCC 513] has been reiterated in the *Inspector of Police* (supra), which is quoted as under:

“ The principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant’s own pleasure or benefit then such acts shall not be protected under the doctrine

of State immunity. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. The question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage."

Further, it is held that the public servants in fact been treated as special category under Section 197 to protect them from malicious or vexatious prosecution. Such protection from harassment is given in public interest, the same cannot be treated as shield to protect the corrupt officials. The procedural provisions relating to sanction must be construed in such a manner as to advance the causes of honesty and justice and good governance as opposed to escalation of corruption.

13. Due consideration has been given to the submission of learned counsel for both the parties. The LCR that was called for, has also gone through.

14. The respondent no.2/complainant in his complaint petition has narrated three incidents, that is on 29.05.2017 he was called by the accused persons to the police station in the afternoon and threatened the complainant to vacate the land occupied by him and he was offered Rs.10,000/- for the purpose. On the next day, all the accused persons went to the house of the complainant and in his absence, damaged the household articles and threatened his wife to comply the direction given by the police officials i.e. to vacate the land and on 02.06.2017 the accused petitioners again came to the house of complainant and forcefully took him to police station and at the behest of private person Punaram Bora, police officials compelled the complainant to prepare the agreement to vacate the land within five days. Apart from the complainant, his son, wife and another one were also examined by the learned trial court who has lent support to the case of the complainant in entirety. From the complaint as well as the statement of the witnesses, a prima facie case is made out against all the police officials that in collusion with the private person, the police has fabricated the said documents, the genuineness of same is itself shaky.

15. Going by the plea that was taken by the petitioners that they only investigated the matter on the basis of the complaint made by Punaram Bora dated 01.06.2017 vide G.D. Entry No.10. It is to be noted that the petitioners have not denied about going to the house of the complainant on 01.06.2019 and about calling of the complainant to the police station on 02.06.2019. In fact, they have admitted about the execution of the agreement between the parties in the police station by the complainant on 02.06.2016, but they have explained that the agreement was executed as the matter was settled between the parties. But such a contention raised by the petitioner cannot sustain in view of evidence of the complainant's side to the contrary. Any such disputed fact is to be established only through full-fledged trial.

16. So far as regard the G.D. Entry dated 01.06.2017, it is to be noted that the said Punaram Bora alleged that his plot of land has been encroached by the complainant Prafulla Bhuyan since long and he has not been evicted from the land even after issuance of notice by the Government and he is trying to encroach another portion of land. The above

grievances itself is of civil in nature because if any person is illegally occupying a land one has to resort to the civil forum for eviction of unauthorized person as per the procedure laid down under the Code of Civil Procedure and police machinery has no authority to evict a person by way of force and otherwise, but same has happened in the present case. The said G.D.E. was not even registered as an FIR, empowering the police personnel to investigate such a land dispute which is civil in nature. Even the petitioners tried to justify their conduct that they went to the house of complainant for investigation but the subsequent conduct of the petitioners, threatening the family of the complainant, compelling the complainant and his son to prepare the agreement to vacate the land with at threat to life cannoway, can be termed as official duty. The entire episode itself depict a manhandling of police power to secure vested interest of other person.

17. On the next, there is serious doubt over the authenticity of the aforesaid G.D. Entry dated 01.06.2017 due to other certain reasons.

18. On examination of the LCR, it reveals that the complaint petition was filed on 08.06.2017 and the accused petitioners after receipt of summonses entered their appearance on 05.11.2017. Thereafter, they were allowed to go on bail and the case was proceeded for hearing i.e. for recording evidence before charge and since 09.07.2018, the learned trial court examined five witnesses before framing of charge and their cross-examination was reserved. On 04.08.2018, they preferred a petition under Section 197 CrPC for discharging them for non-obtaining of prosecution sanction and the same was rejected by the learned trial court on 13.09.2018. Thereafter, the case again posted for consideration of charge for another few months. The case proceeded in slow pace as all the time the accused petitioners remained absent showing cause of busy in law and order duty and subsequently, the present petition has been preferred. Obviously, the petitioners have come up with the plea that they being the public servants duly investigated the matter on the basis of the complaint filed by the Punaram Bora, but the same plea was not taken before the trial court at the relevant point of time while filing the petition for discharge.

19. In their petition under Section 197 CrPC, the petitioners have stated that the place of occurrence is Teok Police Station and they were discharging their duty in official capacity on the day of occurrence and as no prosecution sanction has been taken from the competent authority to prosecute the accused persons, so the case is bad in law for want of sanction and the accused persons are liable to be discharged. In the said petition, there is no whisper about G.D.E. that on the basis of the G.D. Entry, they investigated the matter, and the agreement was executed etc. etc. as has been pleaded in the present petition, which itself indicative of taking a false pretext only to make out a case in to protect themselves. Such a plea if it is genuine one, it should have been raised on the very day of their appearance, without facing the trial for a long period. More so, they have not cross-examined the witnesses produced by the complainant to challenge and suggest their plea, and if they could have substantiate their above plea, they could have facilitate the order of discharge but without doing so, they filed the aforesaid vague petition for discharge for want of prosecution sanction.

20. The learned trial court answered the petition under Section 197 CrPC in the following

way (relevant portion quoted).

“In the instant case in hand, the matter was at the stage of cross-examination of prosecution witnesses. And, therefore, the question of necessity of sanction can be rightly taken up at this stage.

But, now the question is whether the accused persons were doing those acts as allowed while they were acting or purporting to act in the discharge of their official duties.

And in the instant case in hand, the act of the accused persons cannot be considered in pursuance to their official duties. From a bare perusal of the complaint petition, it appears that the public servants herein the police personals (the accused persons in this case) have misused their power.

It is evident that the accused persons without any formal complaint against the complainant harassed and tortured the complainant and his family members and that on two different occasions.

Merely, stating that the incident took place inside the Teok Police Station cannot be a ground to claim protection u/s 197 Cr.P.C. and it is also clear that the incident took place in the house of the complainant as well. And also, whereby a GD entry by the concerned persons before taking the complainant for medical examination cannot be treated as a ground to provide protection to them u/s 197 Cr.P.C.

Here, I would like to refer a decision of Hon’ble Supreme Court in *Rajib Ranjan v. R. Vijaykumar*, (2015) 1 SCC 513, where it was held that “even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misconduct on his part is not to be treated as an act in discharge of his official duties and therefore, provisions of section 197 of the code will not be attracted.”

Hence, though the accused persons contended or placed that they have done those acts as alleged in discharge of their official duties, I am of the opinion that those acts were such that they could not be considered or been done in discharge of their official duties.

Hence, the prayer of the discharge of the accused persons is rejected and the petition No.1947/18 stands disposed of.”

21. In view of the matters on record and the evidence adduced by the complainant/respondent no.2 as well as the decision of Hon’ble Supreme Court relied by the trial court, the impugned order passed by the learned Magistrate suffers from no illegality.

22. In the case of *Matajog Dobey* (supra), Constitution Bench of Supreme Court held that “requirement of sanction may be raised at any stage of proceedings as the complaint may not disclose all the facts to decide question of immunity but facts subsequently coming either to notice of the police or in the judicial inquiry or even the course of prosecution evidence may establish the necessity of sanction. It would open to the accused to place the material on record showing that he was on duty and also acts complained of were so inter-

related or inseparably connect with his official duty so as to attract the protection accorded by law. The court also hold that the difference between acting or purporting to act in discharge of his official duty is merely a language not of substance.

23. Various other decisions referred above, it has been held that to decide the case whether sanction is necessary, the test is whether the act is totally unconnected with the official duty or whether there is reasonable connection with the official duty. In case of an act of policeman or any other public servant on connected with the official duty, there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected to discharge of his official duty, it does not matter, if the policeman has exceeded the scope of his power and/or beyond four corners of law. Further, it has also been held that if the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge shown official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate Government is obtained under Section 197 of the Code.

24. In *Sankaran Moitra* (supra), it has been held that if the accused charged has the connection with discharge of his duty, then it must be held to be official, to which the applicability of Section 197 cannot be disputed and trial cannot proceed without sanction. In the aforesaid case, a Police Officer detained a person, who died and the trial which was started without sanction, was struck down by the Hon'ble Supreme Court, observing that on applicability of Section 197 CrPC, it is the duty of the Court to apply its mind to the fact situation before it. The said protection is qualified and conditional and protection is not available, if the act complained of has no nexus, reasonable connection or relevance to the official act or duty of the public servant and is otherwise illegal, unlawful or in the nature of offence, he cannot get shelter under Section 197CrPC.

25. This court has considered the decision relied by the petitioners' side and the parameter laid down in all the cases in sum and substance is same that one who claim for protection under Section 197 CrPC, has to brought on record that the public servant was discharging his official duty and the acts complained of, is related to his official duty. The Hon'ble Supreme Court has unanimously clarified that in the criminal misconduct and misdemeanor on the part of a public servant, not to be treated as an act of discharge of his official duties. The learned trial court in its order has rightly placed reliance upon the decision of *Rajib Ranjan v.R. Vijaykumar*, (2015) 1 SCC 513, wherein it has been held that while discharging his official duty if a public servant enters into criminal conspiracy or indulges in criminal misconduct, same cannot be treated as an act of discharge of official duties.

26. In the instant case, the purported act conducted by the petitioners being public servant in fabricating documents cannot be co-related with their public duty. In the light of the aforesaid decisions and in the background of the present case, the complainant has prima facie made out a case against the accused persons that the petitioners have indulged in conspiracy with the private person to prepare false document to deprive a person from the possession of immovable property. By no stretch of explanation the purported act of the petitioners will come within the purview of official duty and only because they are in the police station with their uniform, they cannot take the shield the uniform to protect their

unlawful conduct. Their prayer for quashing the proceeding by the petitioners is nothing but an attempt to frustrate the lawful claim of the complainant/respondent no.2.

27. In the *State of Haryana v. Bhajan Lal & Ors.*, 1992 Supp (1) SCC 335, the Hon'ble Supreme has laid down the principles on which the court can quash the criminal proceedings under Section 482CrPC.

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

28. In the present case, the allegation against the complainant coupled with the evidence so far recorded, prima facie constitute an offence against the accused persons/petitioners and disclose a cognizable offence justifying for taking cognizance of the offence.

29. Having regard to the circumstances appearing in the case and the discussion and findings made above and in view of settled legal proposition, this court is of the opinion that quashing of proceeding as sought for is not justifiable one. The inherent power under Section 482 CrPC though wide, have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the test specifically laid down under this provision. In the backdrop of the case, rather it would be unjustified to interfere into the

lawful proceeding before the court of law.

30. In view of above observation and findings, present petition lacks merit, hence dismissed.

R.M.S.

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Petition dismissed.