

Court No. - 71

Case :- APPLICATION U/S 528 BNSS No. - 9751 of 2025

Applicant :- Animesh Kumar And 3 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Vinay Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

2. This application u/s 528 of The Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred as BNSS) has been filed for quashing of the entire proceedings, including summoning order dated 02.01.2024, of Complaint Case No. 179 of 2022, under Sections - 323, 342, 394 I.P.C., Police Station - Kotwali Farrukhabad, District - Farrukhabad, pending in the court of Special Judge (Dacoity Affected Areas), Farrukhabad.

3. The opposite party No. 2 / complainant, who is a doctor, has lodged the impugned complaint alleging that on 28.06.2022 he, along with his staff members namely, Kuldeep Agnihotri, Ashok Kumar, Vijay Agrawal and Saumya Dubey, was returning from Kanpur by his car. In the way his car got rubbed from a white color car. Two-three persons came out from the car and a quarrel has taken place, however, matter was subsided. On the same day at about 10.00 PM when complainant reached at near Khudaganj, three cars got stopped his car and applicants namely Constable Kuldeep Yadav, Constable Sudhir, constable Dushyant, Sub-Inspector Animesh Kumar, along with six other police officials, came out from those cars and they started abusing the complainant and his companions by saying that how they dared to rub their car from their vehicle. They fired some shots in air and forcibly dragged the complainant and his companions into their vehicles. The said police officials have damaged mobile phone of the

complainant and snatched golden chain and cash of Rs. 16,200/ from him. The applicants have assaulted the complainant and his companions with leg and fists and they took them to Saraimera, Kannauj and confined them for about one and a half hour. Later on, the family members of complainant came to know about the incident and thereafter they were set free.

4. The complainant was examined under Section - 200 Cr.P.C..The witnesses, namely, Kuldeep Agnihotri and Ashok Kumar were examined under Section - 202 Cr.P.C. The applicants were summoned for offences under Sections - 323, 342, 394 I.P.C. It appears from record that complainant Raghvendra Agnihotri has sustained six injuries, Saumya Dubey has sustained four injuries and Kuldeep Agnihotri and Vijay Agarwal have sustained three injuries each.

5. It is submitted by learned counsel for the applicants that applicants are police officials and at the relevant time they were posted at S.O.G., Kannauj. On the day of alleged incident on 28.06.2022 applicants were patrolling in the area and that the complainant was seen driving his vehicle rashly and he collided his car with the vehicle of applicants. The applicants have warned the complainant / opposite party no.2 to drive carefully, due to which complainant got annoyed and later this false complaint was lodged against the applicants. The complainant is doctor and he got prepared false injury reports of himself and of the alleged injured persons. It is further submitted that at the time of incident, the applicants were discharging their official duty and thus, they cannot be prosecuted without sanction under Section – 197 Criminal Procedure Code (hereinafter referred as CrPC) but in the instant matter no such sanction has been obtained. Learned counsel has referred provisions of section 197 CrPC and submitted that at the time of alleged incident the applicants, being police officials, were on patrolling duty and, they have been summoned without obtaining sanction in terms of section 197 Cr.P.C. and on this ground alone the impugned proceedings are liable to be quashed.

6. It is further submitted that the alleged injuries shown to the complainant and his companions are wholly false and fictitious. The opposite party no.2/complainant is

a doctor and he has got prepared false injury reports. It was submitted that the witnesses examined under Section - 202 Cr.P.C. are employees of the opposite party no.2. It was submitted that no prima case is made out against applicants. The learned Trial Court has failed to consider the matter and the position of law in correct perspective and committed error by summoning the applicants. Referring to facts of the matter, it was submitted that the impugned proceedings are liable to be quashed.

7. Learned A.G.A. has opposed the application and submitted that the opposite party no.2/complainant has made clear allegations that on 28.06.2022 while he was coming from Kanpur, his car got rubbed with the vehicle of applicants and thereafter applicants got his car stopped. They have abused and assaulted the complainant and his companions. The complainant has further alleged that they forcibly took the complainant and his companions into their vehicles and damaged mobile phone of complainant and also snatched golden chain and cash from them. The complainant and his companions were assaulted with leg and fists and resultantly they have sustained injuries. It was further submitted that complainant and his companions were kept confined for about one and a half hour in the police station. Referring to these facts, it was submitted that a prima facie case is made out against applicants.

8. I have considered the rival submissions and perused the record.

9. The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases. However, where the allegations made in the FIR or the complaint and material on record even if 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, the charge-sheet may be quashed in exercise of inherent powers under Section 482 of the Cr.P.C. In well celebrated judgment reported in AIR 1992 SC 605 **State of Haryana and others Vs. Ch. Bhajan Lal**, Supreme Court has carved out certain guidelines, wherein FIR or proceedings may

be quashed but cautioned that the power to quash FIR or proceedings should be exercised sparingly and that too in the rarest of rare cases.

10. So far the question of applicability of section 197 Cr.P.C. is concerned, this issue was recently considered by the Hon'ble Apex Court in case of **Om Prakash Yadav Vs Niranjana Kumar Upadhyay & Ors.** 2024 INSC 979. The Hon'ble Court considered a number of earlier decisions and held as under:

"65. Thus, the legal position that emerges from a conspectus of all the decisions referred to above is that it is not possible to carve out one universal rule that can be uniformly applied to the multivarious facts and circumstances in the context of which the protection under Section 197 CrPC is sought for. Any attempt to lay down such a homogenous standard would create unnecessary rigidity as regards the scope of application of this provision. In this context, the position of law may be summarized as under : -

"(i) The object behind the enactment of Section 197 CrPC is to protect responsible public servants against institution of possibly false or vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act in their official capacity. It is to ensure that the public servants are not prosecuted for anything which is done by them in the discharge of their official duties, without any reasonable cause. The provision is in the form of an assurance to the honest and sincere officers so that they can perform their public duties honestly, to the best of their ability and in furtherance of public interest, without being demoralized.

(ii) The expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" in Section 197 CrPC must neither be construed narrowly nor widely and the correct approach would be to strike a balance between the two extremes. The section should be construed strictly to the extent that its operation is limited only to those acts which are discharged in the "course of duty". However, once it has been ascertained that the act or omission has indeed been committed by the public servant in the discharge of his duty, then a liberal and wide construction must be given to a particular act or omission so far as its "official" nature is concerned.

(iii) It is essential that the Court while considering the question of applicability of Section 197 CrPC truly applies its mind to the factual situation before it. This must be done in such a manner that both the aspects are taken care of viz., on one hand, the public servant is protected under Section 197 CrPC if the act complained of falls within his official duty and on the other, appropriate action be allowed to be taken if the act complained of is not done or purported to be done by the public servant in the discharge of his official duty.

(iv) A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such that it lies within the scope and range of his official duties. The act complained of must be integrally connected or directly linked to his duties as a public servant for the purpose of affording protection under Section 197 CrPC. Hence, it is not the duty which requires an examination so much as the "act" itself.

(v) One of the foremost tests which was laid down in this regard was -

whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.

(vi) Later, the test came to be re-modulated. It was laid down that there must be a reasonable connection between the act done and the discharge of the official duty and the act must bear such relation to the duty such that the accused could lay a reasonable, but not a pretended or fanciful claim, that his actions were in the course of performance of his duty. Therefore, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be committed by the public servant either in his official capacity or under the color of the office held by him such that there is a direct or reasonable connection between the act and the official duty.

(vii) If in performing his official duty, the public servant acts in excess of his duty, the excess by itself will not be a sufficient ground to deprive the public servant from protection under Section 197 CrPC if it is found that there existed a reasonable connection between the act done and the performance of his official duty.

(viii) It is the "quality" of the act that must be examined and the mere fact that an opportunity to commit an offence is furnished by the official position would not be enough to attract Section 197 CrPC.

(ix) The legislature has thought fit to use two distinct expressions "acting" or "purporting to act". The latter expression means that even if the alleged act was done under the color of office, the protection under Section 197 CrPC can be given. However, this protection must not be excessively stretched and construed as being limitless. It must be made available only when the alleged act is reasonably connected with the discharge of his official duty and not merely a cloak for doing the objectionable act.

(x) There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down such a rule. However, a "safe and sure test" would be to consider if the omission or neglect on the part of the public servant to commit the act complained of would have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, the protection under Section 197 CrPC can be granted since there was every connection with the act complained of and the official duty of the public servant.

(xi) The provision must not be abused by public servants to camouflage the commission of a crime under the supposed color of public office. The benefit of the provision must not be extended to public officials who try to take undue advantage of their position and misuse the authority vested in them for committing acts which are otherwise not permitted in law. In such circumstances, the acts committed must be considered *dehors* the duties which a public servant is required to discharge or perform.

(xii) On an application of the tests as aforesaid, if on facts, it is *prima facie* found that the act or omission for which the accused has been charged has a reasonable connection with the discharge of his official duty, the applicability of Section 197 CrPC cannot be denied.

66. At the cost of repetition, we say that the position of law on the application of Section 197 CrPC is clear – that it must be decided based on the peculiar facts and circumstances of each case. This Court has held in a legion of decisions that any misuse or abuse of powers by a public servant to do something that is impermissible in law like threatening to provide a tutored statement or trying to obtain signatures on a blank sheet of paper; causing the illegal detention of an accused; engaging in a criminal conspiracy to create false or fabricated documents; conducting a search with the sole object of harassing and threatening individuals, amongst others, cannot fall under the protective umbrella of Section 197 CrPC."

11. Thus, the object behind the provisions of section - 197 Cr.P.C. is to protect responsible public servants against institution of possibly false or vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act in their official capacity. The expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" in section 197 Cr.P.C. must neither be construed narrowly nor widely and the correct approach is to strike a balance between the two extremes. While considering the question of applicability of section 197 Cr.P.C. the Court has to apply its mind to the factual situation before it. A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such that it lies within the scope and range of his official duties. The act complained of must be integrally connected or directly linked to his duties as a public servant for the purpose of affording protection under section 197 Cr.P.C.. It

was laid down that there must be a reasonable connection between the act done and the discharge of the official duty and the act must bear such relation to the duty such that the accused could lay a reasonable, but not a pretended or fanciful claim, that his actions were in the course of performance of his duty. Therefore, the sine qua non for the applicability of this section is that the offence charged must be committed by the public servant either in his official capacity or under the color of the office held by him such that there is a direct or reasonable connection between the act and the official duty.

12. Coming to facts of the instant matter, perusal of record shows that the opposite party no.2 / complainant has made allegation that on 28.06.2022 while he, along with his companions, namely, Kuldeep Agnihotri, Ashok Kumar, Vijay Agrawal and Saumya Dubey, was returning from Kanpur, his car has got rubbed from the vehicle of applicants, who were police officials and posted at S.O.G., Kannauj. Later, the applicants got his car stopped by three vehicles and they have abused and assaulted the complainant and his companions. They have damaged his mobile phone and snatched golden chain and cash. The applicants forcibly took the complainant and his companions to Saraimera police post and they were kept confined there for about one and a half hour. The complainant has supported that version in his statement recorded under Section - 200 Cr.P.C..The witnesses, namely, Kuldeep Agnihotri and Ashok Kumar have also supported the said version under Section - 202 Cr.P.C. It appears from record that complainant Raghvendra Agnihotri has sustained as many as six injuries. Similarly, his companion Saumya Dubey has sustained four injuries, Kuldeep Agnihotri and Vijay Agarwal have sustained three injuries each. There is nothing to show that at the time of incident the applicants were on patrolling duty at the spot of alleged incident. No General Diary entry of the applicants has been brought on record to show that at the time of alleged incident they were on patrolling duty or they were performing any official duty. It is not the case of applicants that complainant or his companions have committed any crime or any case was registered against them regarding the incident in question. It is also not the case of applicants that while discharging their

duties, they acted in excess of their duty. Even otherwise the act of assault made on complainant and his companions and commission of robbery has no reasonable or rational nexus with discharge of the official duty of applicants. Considering facts of the matter and position of law, it can not be said that the act of applicants / accused police officials was committed in their official capacity or under the color of the office held by them. There is no direct or reasonable connection between their act and their official duty. Merely because the applicants are police officials, it would not provide any shield to the applicants. Police uniform is not license to assault innocent citizens. Therefore, the act / offence committed by the applicants can safely be said to have been outside the scope of their official duty which obviates the question of sanction for their prosecution and thus, the applicants are not entitled to avail the shield provided under section 197 Cr.P.C..

13. So far factual aspects of the matter are concerned, as stated above, a prima facie case is made out against applicants. There is material to show that on 28.06.2022 the applicants have abused and assaulted the complainant and his companions merely because his car got rubbed with the vehicle in which the applicants were travelling. The version of complainant is supported by the medical examination reports of injured persons. There is also allegation that applicants damaged the mobile phone of the complainant and snatched his golden chain and that they forcibly took the complainant and injured to the police post and kept them confined for one and a half hour. In view of material on record, it cannot be said that no prima facie case is made out against the applicants. In fact the submissions raised by learned counsel for the applicants call for determination on questions of fact which may be adequately adjudicated upon only by the trial court and even the submissions made on points of law can also be more appropriately gone into only by the trial court. Adjudication of questions of facts and appreciation of evidence or examining the reliability and credibility of the version, does not fall within the arena of jurisdiction under Section - 528 B.N.S.S.

14. In view of aforesaid, it is clear that no case for quashing of proceedings or for

any other interference is made out. The application under Section - 528 B.N.S.S. lacks merit and thus, liable to be dismissed.

15. The application under section - 528 B.N.S.S. is accordingly **dismissed**.

Order Date :- 3.4.2025

S Rawat