GAHC010058742019

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./296/2019

DIGANTA BARAH
S/O. LT. JONARAM BARAH, R/O. QUARTER NO. A-4, ZONE-II, POLICE HOUSING COMPLEX, DGP OFFICE CAMPUS, ULUBARI, GUWAHATI-781007, KAMRUP (M), ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY PP, ASSAM.

2:SMT. BARASHA BORAH BORDOLOI

W/O. SRI DHARANI BORDOLOI
R/O. BAIRAGIMOTH
P.O. AND P.S. DIBRUGARH
DIST. DIBRUGARH
ASSAM-786001

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT

Date : 18-07-2023

Heard Mr. K.N. Choudhury, learned Senior Counsel, being assisted by Mr. J. Patowary, learned counsel for the petitioner. Also heard Mr. M.P. Goswami, learned Addl. P.P., Assam appearing for the State/respondent No.1 and Mr. J.I. Borbhuiya, learned counsel for the respondent No.2.

2. In this petition, under Section 482 of the Cr.P.C., petitioner Sri Diganta Barah has put to challenge the correctness or otherwise of the order, dated 28.04.2016, passed by the learned Chief Judicial Magistrate, Dhubri in C.R. Case No.263/2016. It is to be noted here that vide impugned order dated 28.04.2016, the learned Chief Judicial Magistrate, Dhubri took cognizance of the offences under sections 120(B)/166/294/352 /354/357/509/34 of the IPC, against the present petitioner along with three other accused persons and issued process to him to appear before the Court and to stand trial.

3. The background facts, leading to filing of the present petition, are adumbrated as under:-

"Smti Barasha Borah Bordoloi, the respondent No.2 here-in, filed a Complaint Case against the present petitioners, namely, Smti. Minu Roy and Smti. Halima Khatun, along with three others alleging inter-alia amongst others that, on 19.12.2015, she along with her driver and Advocate came to Dhubri to cause personal service of summons upon Shri Diganta Barah, the then Superintendent of Police, Dhubri, in connection with a Title Suit No.70/2015, pending in the Court of Civil Judge, Dibrugarh. Then her Advocate met Mr. Borah in his office chamber to deliver the summons and documents. But, Shri Borah refused to accept the same. Upon being informed about such refusal by her Advocate, she decided to have direct talk with Mr. Barah and she went to

the office of Mr. Barah with her driver and on her reaching there one lady constable, namely, Halima Khatun guided her respectfully to the office chamber of Mr. Barah to deliver the same. Then Mr. Barah asked the respondent No.2 to come to his residence in the evening, where he will receive the summons and documents in presence of his Advocate. Accordingly, in the evening, the respondent No.2, along with her driver arrived at the residence of Mr. Barah and informed her arrival to the gate keeper as well as to Mr. Barah through his mobile. But, there was no response from the side of Mr. Barah. While she was waiting in front of his gate, at about 10 P.M., Mr. Barah along with his wife and Addl. Superintendent of Police, Sri Indranil Baruah and some other people including Constable Minu Roy, came out of his residence. And Mr. Barah had shouted upon her like a mad person and pointing their service weapon, Mr. Barah and the Addl. S.P. Shri Indranil Baruah had threatened to kill her if she does not leave that place. The respondent No.2 also alleged that thereafter, Mr. Barah had instructed some persons over telephone to register a false case against the respondent No.2 and after a few minutes, the respondent No.2 was assaulted and pushed forcefully into a police vehicle, wherein the Addl. S.P. had abused her physically. Further, it is alleged in the complaint that Mr. Barah had ordered his subordinates to detain the respondent No.2 inside the male lock up of Dhubri Police Station, and accordingly, she was detained there for upto 4:00 P.M. of next day, without food and water and she was also not allowed to communicate with family members by using mobile phone.

Upon the said complaint, the learned Chief Judicial Magistrate Dhubri registered CR Case No.263/2016, and made over the same to the learned Addl. Chief Judicial Magistrate, Dhubri, vide order dated 20.01.2016, and the learned Court below, on the basis of the statement of the complainant and another

witness, recorded under Section 200 Cr.P.C. took the cognizance of the offences against the accused named in the complaint along with present petitioner, under Sections 120(B)/166/294/352 /354/357/ 509/34 of the IPC, and issued summons to him, vide order dated 28.04.2016, and directed him to appear before the Court to stand trial."

4. Being highly aggrieved by the order of taking cognizance, dated 28.04.2016, the petitioner has approached this court questioning the correctness or otherwise of the said order, *interalia,* on the following grounds among others:-

(i) That, the learned Court below had committed error in law in taking cognizance of the complaint case and by issuing summons to the petitioner without following the proper procedure of law and as such the impugned order, dated 28.04.2016, is liable to be set aside and quashed;

(ii) That, the learned Court below, while taking cognizance, had failed to take into account that the prosecution side had not sought for prosecution sanction from the competent authority to proceed with the case against the petitioner and taking cognizance, without the prosecution sanction is bad in law and as such the impugned order dated 28.04.2016, is liable to be set aside;

(iii) That, if the alleged offence was committed while performing official duty or in purported performance of the duty, Section 197 of the Code cannot be by-passed by reasoning that the person cannot perform his official duty outside his normal jurisdiction and as such, issuance of process against the petitioner, without prior sanction, is liable to be set aside;

(iv) That, a bare perusal of the complaint petition as well as initial

deposition of the respondent No.2, and the statement of her witnesses, reveals that the petitioner, while discharging his official duty had acted upon the respondent No.2 and as such, prior sanction is required to initiate the case against him, which is absent in the present case;

(v) That, the learned trial Court had failed to apply his judicial mind to the averments in the complaint while taking cognizance against the petitioner and as such the impugned order is liable to be set aside;

(vi) That, the criminal proceeding is manifestly attended with mala-fide and/or the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused person and with a view to spite him due to private and personal grudge and therefore, contended to allow the petition by setting aside the impugned order dated 28.04.2016;

5. Mr. K.N. Choudhury, learned Senior Counsel for the petitioner, submits that the petitioner was serving as Superintendent of Police at Dhubri, at the relevant point of time. And on the relevant date at night the respondent No.2 had created ruckus and nuisance in front of his official residence while his staffs at gate refused her to allow to enter into his residence and it was his duty to remove such nuisance from there and as ordered by him his staffs, including the Addl. S.P., namely, Shri Indranil Baruah removed her from there and taken her to Dhubri Police Station. Mr. Choudhury further submits that though the occurrence took place at night, yet being the Police Officials, it was his duty to maintain law and order in any place of the district and as such removing the respondent No.2 from the gate of his official residence is also an official duty and since he was discharging his official duty, prosecution sanction under section 197 Cr.P.C is a must to prosecute him and as no prosecution sanction

has been obtained by the respondent No.2, while filing the complaint, the impugned order of taking cognizance against the petitioner, is illegal and without jurisdiction and liable to be interfered with by this Court, by exercising the jurisdiction under Section 482 of the Cr.P.C. Mr. Choudhury has referred to a three Judge bench decision of Hon'ble Supreme Court in **Matajog Dubey vs. H.C. Bhari,** reported in **(1955) 2 SCR 925.** Under the above facts and circumstances, Mr. Chaudhury contended to allow this petition.

6. Per contra, Mr. J. I. Borbhuiya, the learned counsel for the respondent No.2, submits that the prayer being made by the petitioner in this petition and the prayer made by one of the co-accused namely, Shri Diganta Barah, in the Criminal Petition No.995/2016, being the same, and the said petition having been dismissed by this Court, after hearing learned Advocates of both the parties, the present petition with the same prayer, is not maintainable and the only recourse, available to the petitioner, is to approach the Hon'ble Supreme Court, by filing Special Leave Petition. Mr. Borbhuiya further submits that correctness of the impugned order, having been unsuccessfully challenged in this Court; it cannot be challenged again on different ground. And as such, Mr. Borbhuiya submits that the present petition against the same impugned order is not maintainable. Mr. Borbhuiya also submits that all the accused named the complaint petition, including the petitioner, were involved in the conspiracy against the respondent No.2, and pursuant to the said conspiracy, two criminal cases were registered against the respondent No.2, being Dhubri P.S. Case No.1589/2015 and the Dhubri P.S. Case No.1590/2015, and there is specific allegation in that regard. Referring to four case laws, **(i) Inspector of Police & Anr. vs. Battenapatla Vankataratnam & Anr.,** reported in **(2015) 13 SCC 87; (ii)**

Rajib Ranjan & Ors. vs. R. Vijaykumar, reported in **(2015) 1 SCC 513; (iii) Devinder Singh & Others vs. State of Punjab through CBI**, reported in **(2016) 12 SCC 87; (iv) Devendra Prasad Singh vs. State of Bihar & Anr., Criminal Appeal No. 579 of 2019,** arising out of **SLP (Crl.) No.21 of 2018,** Mr. Borbhuiya submits that prosecution sanction is required only when the alleged offences have been committed in discharge of the official duty. And in the present case, since the petitioner has committed the offence, while he was not discharging his official duty, the sanction, as contemplated in section 197 Cr.P.C. is not required. Further, Mr. Borbhuiya submits that hatching conspiracy and cheating, fabrication of record or misappropriation cannot be said to be done in discharge of the official duty by the public servant. Mr. Borbhuiya also referred two other case laws:- (i) **State of M.P. vs. Awadh Kishore Gupta &Ors.,** reported in **(2004) 1 SCC 691,** (ii) **State of Madhya Pradesh vs. Kunwar Singh, Criminal Appeal No. 709 of 2021** arising out of **SLP (Crl) No. 5517 of 2021,** to contend that in a petition under Section 482 of the Code of Criminal Procedure, the merit of the allegation cannot be enquired into and the evidence cannot be appreciated. Mr. Borbhuiya, therefore, contended to dismiss this petition as it is bereft of merit.

7. In his reply to the submission of Mr. Borbhuiya, Mr. Choudhury, the learned Senior Counsel for the petitioner, submits that the present petitioner had preferred the Criminal Petition No.995/2016, on the ground of non-compliance of Section 202 of the Cr.P.C. and the present petition is being filed on a different ground i.e. for want of prosecution sanction. Mr. Choudhury also submits that there is no legal bar in approaching this court again on different ground as the life and liberty of the petitioner is involved.

8. In view of the averments made in the petition and also in view of the submissions, so advanced by the learned counsel for both the parties, the issues, that has arisen for adjudication of this court are formulated as under :-

(i) Whether the present petition is maintainable in view of adjudication of similar prayer in Criminal Petition No.995/ 2016 filed by him ?

(ii) Whether the petitioner was on official duty at the relevant point of time and if so, whether prosecution sanction is required to take cognizance of the offences against him undersection34/120(B)/166/167/294/352/353/354/357/504 /506 and 509 of the IPC ?

9. I have carefully gone through the petition and the documents placed on record and also gone through the case laws, referred by Mr. Choudhury, learned Senior Counsel for the petitioner and also gone through the case laws, referred by Mr. J.I. Borbhuiya, learned counsel for the respondent No.2. I have also carefully gone through the Annexure-I (complaint petition) and Annexure-II, the statement of the respondent No.2, recorded under Section 200 Cr.P.C., i.e., and Annexure-III, the statement of her witness - CW.1. Also, I have gone through the Criminal Petition No.995/2016, and the impugned order dated 28.04.2016, passed by the learned court below in CR Case No. 263/2016.

10. Indisputably, the present petitioner had preferred Criminal Petition No.995/2016, for quashing the complaint on the ground of non-compliance of section 202 Cr.P.C, by the learned court below, while taking cognizance against him. But, the present petition is being preferred on a different ground i.e.

absence of prosecution sanction, as required under Section 197 Cr.P.C. Thus, indisputably, the grounds for preferring both the petitions are different. As the ground agitated in the said petition is different from the grounds so taken in the present petition, this court is unable to record concurrence with the submission of Mr. Borbhuiya, the learned counsel for the respondent No.2, that the petitioner cannot successfully maintain the present petition and that his remedy is available in the Supreme Court only by way of Special Leave petition. It is, however, a fact that the impugned order, in both the petition, is same. However, the ground for approaching the court is different on both the occasions.

11. The proposition of law, in respect of maintainability of second petition under section 482 Cr.P.C., is well settled by Hon'ble Supreme Court in catena of decisions. In the case of **Anil Khadkiwala vs. State (Government of NCT of Delhi) & Another Criminal Appeal No(s).1157 of 2019** (arising out of SLP(Crl.) No. 2663 of 2017) and in **Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Mohan Singh and Ors.,** reported in **AIR 1975 SC 1002,** it has been held that a successive application under Section 482, Cr.P.C. under changed circumstances is maintainable and the dismissal of the earlier application is no bar to the same. In the case of **Mohon Singh (supra)** it was observed as under:-

> "**2. ....Here, the situation is wholly different. The earlier application which was rejected by the High Court was an application under Section 561A of the CrPC to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was not desirable to interfere with the proceeding at that stage. But, thereafter, the criminal case dragged on for a period of about one and half years without any progress at all and it was in these circumstances that respondents Nos. 1 and 2 were constrained to make a fresh application to the High Court under Section 561-A to quash the proceeding. It is difficult to see how in these circumstances it could ever be contended**

that what the High Court was being asked to do by making the subsequent application was to review or revise the Order made by it on the earlier application. Section 561-A preserves the inherent power of the High Court to make such Orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents Nos. 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of respondents Nos. 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and a half years……."

12. In **Harshendra Kumar D. vs. Rebatilata Koley Etc.,** reported in **2011 Crl.L.J. 1626,** Hon'ble Supreme Court held as under :

"**22. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to Appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the Appellant has resigned much before the cheques were issued by the Company. As noticed above, the Appellant resigned from the post of Director on March 2, 2004. The dishonoured cheques were issued by the Company on April 30, 2004, i.e., much after the Appellant had resigned from the post of Director of the Company. The acceptance of Appellant's resignation is duly reflected in the resolution dated March 2, 2004. Then in the prescribed form (Form No. 32), the Company informed to the Registrar of Companies on March 4, 2004 about Appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the Appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the Appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed to**

proceed against the Appellant, it would result in gross injustice to the Appellant and tantamount to an abuse of process of the court."

13. In paragraph No. 105, (point No.6), in the case of **State of Haryana & Ors. Versus Ch. Bhajan Lal & Ors.; 1992 Supp.(1) SCC 335,** Hon'ble Supreme Court has categorically stated that the inherent powers under Section 482 of the Code could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (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 concerned Act, providing efficacious redress for the grievance of the aggrieved party.

14. In the case in hand the impugned order has adverse impact upon the career of the petitioner, and being so he has every right to test the correctness of the same in the court. Such a right cannot be denied on the ground, so assigned by the learned counsel for the respondent No.2. Thus, drawing premises from the illuminating discourse, and also having relied upon the proposition of law laid down in the cases discussed herein above, this court is of the considered opinion that the present petition is maintainable. The issue No.1, so formulated herein above, stands answered accordingly.

15. That, a cursory perusal of the Annexure-I, Annexure-II and Annexure-III reveals that the complaint case was registered under sections 34/120(B)/166/167/294/352/353/354/357/504/506/509 IPC, and the learned Court below had taken cognizance of the aforementioned offences and issued

process to the petitioner to appear before him and to stand trial. The complaint petition also reveals that on 19.12.2015, the respondent No.2, went to the office chamber of the petitioner, who was working as Superintendent of Police, Dhubri District at the material point of time, to cause service of summons of the Title Suit No.70/2015, pending in the Court of learned Civil Judge, Dibrugarh, as per the order of the said court, along with her Advocate. Then at about 3:30 P.M., on that day, her Advocate informed her about refusal of the Superintendent of Police, Dhubri to receive the summons and then she decided to have a direct talk with the Superintendent of Police, Dhubri and reached his office chamber and then one lady constable, namely, Smti. Halima Khatun had guided her to the office chamber of the petitioner, respectfully. However, the petitioner had refused to accept the summon and called her to his official residence, at about 7:00 P.M., to receive the summon in presence of his Advocate. Accordingly, she reached his official residence, informed the gatekeeper, and sent some messages to the petitioner in his mobile. But, she did not receive any response. Then she waited in front of his gate and at about 9:00 P.M., her driver went to have his dinner, but, he did not return till 10:00 P.M. and then feeling suffocation in her vehicle, she came out of the same. Then having seen her, the petitioner, along with his wife, and Addl. Superintendent of Police, Dhubri - Sri Indranil Baruah and some other persons, including Constable Minu Roy, came out of the residence and then the petitioner started shouting at her with derogatory words.

16. It also reveals that thereafter, Dhubri P.S. Case No.1589/2015 and Dhubri P.S. Case No.1590/2015, were registered against the respondent No.2. It is alleged that the two cases have been registered against the respondent No.2 in

a planned manner to avoid service of summon and also to trap her by all the accused named in the Annexure-I, by repeatedly misusing their official power and position with a mala fide intention. However, nothing has been indicated in the complaint and also in the statement of respondent No.2, as to how the conspiracy was hatched.

17. But, having gone through the two FIRs of Dhubri P.S. Case No.1589/2015, under sections 120(B)/447/294/352/353 IPC and Dhubri P.S. Case No.1590/2015, under section 120(B)/352/353/448 /294/509/506 IPC, registered against the respondent No.2, and the connected records and case diaries, I find that Dhubri P.S. Case No.1589/2015 was registered against the respondent No.2 on the basis of one FIR lodged by one lady constable namely Halima Khatun and Dhubri P.S. Case No.1590/2015 was registered on the basis of an FIR lodged by constable Minu Roy and both FIRs were unsuccessfully challenged before this court in Criminal Petition No. 684/2016 and 681/2016. Further, it appears that investigation of both the FIRs culminated in filing of charge sheet against the respondent No.2.

18. Also, it appears from the record that the FIR of Dhubri P.S. Case No.1590/2015, registered under sections 120(B)/352/353/448/294/ 509/506 IPC, relates to the incident that took place in front of the official residence of the petitioner on 19.12.2015. Thus, the factum of lodging of FIR in connection with the incident that took place in front of the official residence of the Superintendent of Police/present petitioner and culmination of investigation in filing of charge sheet against the respondent No.2, has, in fact, strengthened the stand, so taken by the petitioner that law and order situation was being

created by the respondent No.2 and in order to tackle the same she was taken to Police Station, as ordered by the petitioner, by the Addl. Superintendent of Police and constable Minu Begum and whatsoever was done, was in fact was done in discharge/purported discharge of official duty, and in order to maintain law and order in front of his residence. Under these circumstance Mr. Choudhury, the learned Sr. Counsel submits that the petitioner is entitled to the protective shield, so provided under section 197 of the Cr.P.C. Mr. Borbhuyan, the learned counsel for the respondent No.2 submits that the petitioner is not entitled to protection under section 197 Cr.P.C. in as much as he admitted in his affidavit that the dispute is private dispute between him and the respondent No.2. But, such a submission left this court unimpressed in as much as the occurrence that took place on the road in front of the official residence of the petitioner, by no stretch of imagination, it can be said to be a private dispute.

19. The submission of Mr. Choudhury, the learned Sr. Counsel for the petitioner is not controverted by the respondent No.2 or by the respondent No.1, i.e. the state. Under these facts and circumstances this court finds sufficient force in submission of Mr. Choudhury, and this court is of the considered opinion that the petitioner had directed to remove the respondent No.2 from the road in front of his official residence to maintain law and order situation, being created by her at relevant point of time, and thus whatsoever he had done, the same appears to have been done, in discharge/purported discharge of his official duty.

20. Further, it appears that the present petitioner is a member of the Assam Police Service and at the relevant point of time; he was serving in Dhubri District, as the Superintendent of Police. Attention of the court, at the time of

hearing, was drawn to a Notification No.HMA.280/88, dated 29.05.1990, issued by the Home (A) Department of the Government of Assam, under Sub-Section (3) of Section 197(3) of the Cr.P.C. The section speaks about sanction. And a stand is being taken by the petitioner that the said notification is applicable to him also, as at the relevant time he was on duty, and the sanction required under Section 197 of the Cr.P.C., was not there at the time of taking cognizance against the present petitioner.

21. The requirement of sanction, while committing any offence in discharge of official duty, is well settled by Hon'ble Supreme Court in catena of decisions. Explaining the object of the section in the case of **Indra Devi vs. State of Rajasthan and Another,** reported in **(2021) 8 SCC 768, Hon'ble Supreme Court** has held as under:-

> "**Section 197 of the CrPC seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognisance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance."**

22. In the case of **Matajog Dubey vs. H.C. Bhari,** reported in **(1955) 2 SCR 925,** a Constitutional Bench of Hon'ble Supreme Court has held that:-

> "**Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. It was argued that section 197, Criminal Procedure Code vested an absolutely arbitrary power in the government to grant or withhold sanction at their sweet will and pleasure, and the**

legislature did not lay down or even indicate any guiding principles to control the exercise of the discretion. There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction."

23. While laying down the test, which is required to be adopted to find out whether sanction under Section 197 Cr.P.C. is required or not and to ascertain the scope and meaning of such sanction, their Lordships further held as under:-

"**Slightly differing tests have been laid down in the decided oases to ascertain the scope and the meaning of the relevant words occurring in section 197 of the Code; "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". But the difference is only in language and not in substance. The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection' between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation."**

24. Going by the aforesaid principle, so laid down in the case of **Matajog Dubey (supra)**, a three Judges Bench of Hon'ble Supreme Court, in **S. Moitra vs. State of West Bengal,** reported in **(2006) 4 SCC 584**, has echoed the same rule and held that –

"**If the offence is committed during the course of the performance of his**

official duty, it would attract section 197 Cr.P.C."

25. In the case of **Prakash Singh Badal and another vs. State of Punjab and others,** reported in **AIR 2007 SC 1274,** it has been observed by Hon'ble Supreme Court as under:-

> **"35. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. 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 any such rule. ...."**

26. In the instant case, it has already been held that at the material point of time, the petitioner was serving as Superintendent, Dhubri district. And indisputably, he is a public servant. And being the Superintendent of Police, it was his duty to maintain law and order in his district, be it in front of the official residence or in elsewhere in his district. It also appears that the respondent had created ruckus and law and order situation in front of his official residence. Therefore, to maintain law and order there the petitioner had ordered his subordinate staff to remove the respondent No.2 from the front of his official residence, and pursuant to such she was taken to the Dhubri Police Station by his staff. And further it appears that in connection with the said incident Dhubri P.S. Case No. 1590/2015 was registered and the respondent No.2 and the after investigation, charge sheet has already been submitted. It also appears that the respondent No.2 had un-successfully challenged the said proceeding before this court.

27. Under the aforesaid facts and circumstances, I am of the considered view that any commission or omission on his part in discharge/purported discharge of his official duty, the petitioner herein, being a public servant, is entitled to protection under section 197 of the Code of Criminal Procedure. And in holding so, this court derived authority from the ratios, laid down in the case of **Matajog Dubey (supra)**, **S. Moitra (supra),** and **Prakash Singh Badal (supra),** and also from the Notification dated 29.05.1990. And admittedly, the prosecution sanction was not there while the learned court below had taken cognizance against the petitioner.

28. Since in the case in hand the cognizance of the offence was taken ignoring the express legal bar, engrafted in section 197 of the Code of Criminal Procedure, against the present petitioner, on such count it is the abuse of the process of the court, there is requirement of exercising extraordinary or inherent powers of this court to quash the impugned order of taking cognizance against the present petitioner, to prevent such abuse of the process of court.

29. In catena of its decisions Hon'ble Supreme Court has held that inherent jurisdiction, under Section 482 Cr.P.C., is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon accused, in exercise of inherent powers, such proceedings can be quashed. In the case of **Parbatbhai Aahir v. State of Gujarat** reported in **(2017) 9 SCC 641,** Hon'ble Supreme Court has held that section 482 Cr.P.C. is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any Court; or (ii) otherwise to secure the ends of justice. Same are the powers with the High Court, when it exercises the powers under Article 226 of the Constitution.

30. This being the legal position, the argument, so advanced by Mr. Borbhuiya, the learned counsel for the respondent No.2, left this Court unimpressed. I have carefully gone through the case laws- (i) **Awadh Kishore Gupta (Supra)** and (ii) **Kunwar Singh (Supra),** and I find that the ratio laid down therein would not come into his aid. Abuse of the process of the Court, in the case in hand, is writ large from the record, and as such, it is the duty of this Court to prevent such

misuse by exercising its jurisdiction under Section 482 Cr.P.C.

31. I have also carefully gone through the other case laws, referred by Mr. Borbhuiya, the learned counsel for the respondent No.2, in respect of sanction. But, I find that the ratio, laid down in the said cases, have to be treated as restricted to its own facts, and as such, it would not advance the case of the respondent No.2 anymore. As no sanction has been obtained from the competent authority, before taking cognizance by the learned court below, the impugned order, dated 28.04.2016, so passed, has failed to withstand the test of correctness and as such, the same requires interference of this court. Accordingly question No.(ii) in paragraph No.10 stands answered.

32. In the result, I find sufficient merit in this petition, and accordingly, the same stands allowed. The impugned order, so far it relates to the present petitioner, stands quashed. The parties have to bear their own costs.

JUDGE

Comparing Assistant