



GAHC010163122022

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

Case No. : Crl.Pet./817/2022

MRINAL KANTI ROY
S/O LATE NALINI MOHAN ROY
R/O BROJENDRA ROAD, WARD NO. 08, KARIMGANJ UNDER KARIMGANJ
POLICE STATION IN THE DISTRICT KARIMGANJ, ASSAM, PIN-788710

VERSUS

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

2:SRI NANI BHUSAN DEB
S/O LATE GOPESH CHANDRA DEB
R/O SARADA PALLY (MALIPARA)
WARD NO. 3 KARIMGANJ
UNDER KARIMGANJ POLICE STATION IN THE DISTRICT OF KARIMGANJ
ASSAM, PIN-788712

Advocate for the Petitioner : MR. B M CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

16.06.2023

Heard Mr B M Choudhury, learned counsel for the petitioner and Mr P Borthakur, learned Additional Public Prosecutor for the State of Assam. Also heard Mr M Nath, learned counsel appearing on behalf of the respondent No. 2.



2. The petitioner has filed an application under Section 482 CrPC, read with Section 397 of the CrPC, against the impugned order dated 02.07.2022, passed by the learned CJM, Karimganj, in connection with CR Case No. 620/2017, whereby the learned Magistrate has framed charge under Sections 166/409 of IPC against the accused petitioner.

3. The case of the petitioner is that he is a retired Government Servant and he has retired as In-charge Principal MMMC Girls H S School. One Nani Bhushan Dev instituted a complaint case on 14.07.2017, before the learned CJM, Karimganj, alleging inter alia that he joined as Junior Assistant in the Public High School (now higher secondary school) Karimganj, 08.04.1983. He was subsequently transferred to different schools and lastly to MMMC Girls H S School on 07.07.2010, where he worked as Senior Assistant. The accused petitioner was the Principal In-charge of the said school at that time. The complainant could not hand over the charge on 07.07.2010, as the accused petitioner was not present on that day. On the next day, i.e., 08.07.2010, the complainant handed over charge with lock and key along with some documents which was in his possession, to one Sri Nitu Ranjan Dey, the Junior Assistant of the School, in presence of and on the order of the accused petitioner. The Junior Assistant received the lock and key with the documents after proper verification and endorsed it in presence of the accused petitioner in his office room. Further the complainant on 23.08.2011, sent a letter to the accused with a request for furnishing him copies of his Service Book and allied documents as he required the same for preparation of his pension papers, as he was about to retire on 31.03.2014. Though the accused received the letter on 24.08.2011, vide endorsement on the peon book and subsequently, a reminder letter dated 16.04.2014, from the complainant, but he did not respond. The complainant informed the matter to the Inspector of Schools also, but received no correspondence from the accused till filing of the complaint. Further it is alleged that following his release by the Inspector of Schools from Bipin Pal Vidya Niketan on 29.03.2014, he resumed his duty as the Senior Assistant in MMMC Girls H S School on 31.03.2014, as 30.03.2014 was a Sunday and he retired from service on superannuation on 31.03.2014 from the said school.

4. On 12.02.2015, the complainant sent a letter by registered post to the accused requiring

him to furnish the aforesaid document relating to his pension etc. The accused furnished only two documents, i.e., service book without the Initial Pay Statement and General Provident Fund Statement for the year ended by March, 2014, but did not supply the document i.e. Original Leave Account opened in the Public High School, in the year 1983, Regularization Order, Confirmation Order Filled Up Nomination Form for the Group Insurance Scheme, Filled Up Nomination Form for the Death-cum Retirement Gratuity, Filled Up Nomination Form For The Family Pension and the General Provident Fund Statement issued by the Accountant General, Assam, for period between March, 2010 to March, 2013, though all these documents were available in his office at his disposal.

4.1. It is also stated by the complainant that those documents along with some other papers were handed over to the Junior Assistant of the said school on 08.10.2010. Further the complainant also alleged that after retirement of the accused petitioner from service on 31.11.2015, one Smt Shilpi Dutta became the In-charge Principal of MMMC Girls' H S School. The complainant then sent another letter dated 18.01.2016 for providing information as to whether the accused had handed over the aforesaid documents to her, however, she replied in negative, rather she furnished a photocopy of a forged Leave Account for the period between 06.10.1993 and 31.12.2013, which was prepared by the accused under his signature. The complainant subsequently tried pre-litigation and also filed an RTI Application on 13.10.2017 for getting those documents, but both the efforts proved to be futile. The complainant urgently required those documents for getting his pension and other retirement benefits. He apprehends that the accused intentionally damaged or took away those documents. Hence, this compliant case has been instituted.

5. On receipt of the complaint, the case was registered as CR Case No. 620/2017 and the learned Magistrate after considering the statement of the complainant and also the content of the complaint found *prima facie* material to proceed against the accused petitioner under Sections 166/406/409 IPC and accordingly, cognizance was taken under the aforesaid sections of law.

5.1. On appearance of the accused in response to the summons, the complainant examined three witnesses, including himself. It is also stated that the accused filed a criminal petition

under Section 482 CrPC, before this Court challenging the aforesaid order and this Court did not interfere with the said order and dismissed the Criminal Petition vide No. 831 of 2017.

6. The learned Magistrate after having gone through the evidence of the complainant examined before charge found a *prima facie* case under Section 427 IPC against the accused petitioner and accordingly charge was framed under Section 427 IPC. Being highly aggrieved and dissatisfied with the said order, the complainant filed a revision petition before the Court of learned Sessions Judge, Karimganj. After hearing both sides, the learned Additional Sessions Judge partly allowed the revision, directing the trial Court to consider addition of charge under Section 216 CrPC.

7. Thereafter the accused filed another revision petition before the Court of Sessions Judge, being Criminal Revision No. 14 (1)/2021, but the said revision was dismissed by the Sessions Court. Subsequently, the charge was framed under Sections 166/409 IPC against the petitioner. Against the said order of framing of charge, this criminal revision petition has been preferred.

8. It was urged by the learned counsel for the petitioner that at the time of incident, the accused petitioner was a Principal-In-Charge of MMMC Girls H S School and the offence committed by the petitioner is in exercise of his official duty as a Public Servant, therefore, the previous sanction under Section 197 CrPC is required before the commencement of the process of cognizance, which has not been done by the learned Magistrate at the time of taking cognizance or framing of charge. As such, the order passed by the learned trial Court is bad in law and liable to be set aside

9. In support of his submission, learned counsel for the petitioner has relied on the following case-laws:-

- 1) 1992 Supp (1) SCC 335; (*State of Haryana & Others –vs- Bhajan Lal & Others*)**
- 2) 1992 Cri. L J 2935; (*Sh. B.S. Thind & etc. vs. State of Himachal Pradesh & Anr.*)**
- 3) (2008) 13 SCC 229; (*P K Choudhury vs. Commander 48 BRTF (GREF)*)**

10. On the other hand, learned counsel for the respondent No. 2 has argued that in Section 197 CrPC, it is to be ascertained that any offence alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duty, but the difference is only 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 CrPC unless the Act complained of is an offence. The only point to determine is whether it was committed in the discharge of duty. There must be a reasonable connection between the act and official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of duty, as this question will arise only at a later stage, when the trial proceeds on the merits.

11. It is also the submission of the learned counsel for the respondent No. 2 that Section 197 of the Code is available to the public servants when an offence is said to have been committed while acting or purporting to act in discharge of their official duty. But when the act done by the public servant is reasonably not connected with the discharge of his official duty and is merely a cloak for doing unlawful acts, such acts are not protected. It is also submitted that destroying of documents has not come within the purview of discharging his official duty.

12. In support of his submissions, learned counsel for the respondent has placed reliance on the following case-laws:-

- 1) AIR 1956 SC 44; (*Matajog Dubey vs. H. C. Bhari*)
- 2) AIR 1960 SC 745; (*Dhannjay Ram Sharma vs. M S Uppadaya & Ors*)
- 3) (2020) 2 SCC 153; (*Station House Officer, CBI/ACB/Bangalore vs. B A Srinivasan & Ors.*)

13. I have considered the submissions of the learned counsel for the parties. I have also perused the scanned copy of the record and the order of the learned trial Court.

14. Section 197 of the Code of Criminal Procedure, 1973, reads as follows:-

197. Prosecution of Judges and public servants.—

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction.

15. In the case of **Gauri Shankar Prasad v. State of Bihar & Anr.**; 2000 (5) SCC 15 it was observed thus:-

“What offences can be held to have been committed by a public servant while acting or purporting to act in the discharge of his official duties is a vexed question which has often troubled various courts including this Court. Broadly speaking, it has been indicated in various decisions of this Court that the alleged action constituting the offence said to have been committed by the public servant must have a reasonable and rational nexus with the official duties required to be discharged by such public servant.”

16. In the case of **State of Orissa & Ors. Vs. Ganesh Chandra Jew**; (2004) 8 SCC 40, it was held that-

“Protection under Section 197 is available only when the 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. The test to determine a reasonable connection between the act complained of and the official duty is that even in case the public servant has exceeded in his duty, if there exists a reasonable connection it will not deprive him of the protection. This Court has also observed that there cannot be a 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.”

17. In the case of **K. Kalimuthu vs. State by DSP**; (2005) 4 SCC 512, it was observed that-

“Official duty implies that an act or omission must have been done by the public servant within the scope and range of his official duty for protection. It does not extend to

criminal activities but where there is a reasonable connection in the act or omission during official duty, it must be held to be official. This Court has also observed that the question whether the sanction is necessary or not, may have to be determined from stage to stage.....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. This question may arise at any stage of the proceeding.”

18. In ***State of Karnataka through CBI vs. C Nagarajaswamy; (2005) 8 SCC 370***, the Hon’ble Supreme Court has considered the question of grant of sanction and it was held that grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. Whether proper sanction is accorded or not, ordinarily it should be dealt with at the stage of taking cognizance but if the cognizance of the offence is taken erroneously and the same comes to the notice of the court at a later stage, a finding to that effect is permissible and such a plea can be taken for the first time before an appellate court. In case sanction is held to be illegal then the trial would be held to have been rendered illegal and without jurisdiction, and there can be initiation of fresh trial after the accused was discharged due to invalid sanction for prosecution and a fresh trial was expedited.

19. In the case of ***General Officer Commanding, Rashtriya Rifles v. Central Bureau of Investigation & Anr.; 2012 (6) SCC 228***, the Hon’ble Apex Court has observed that it is for the competent authority to decide the question of sanction whether it is necessary or not and not by the court as sanction has to be issued only on the basis of sound objective assessment and not otherwise. Sanction can be obtained even during the course of trial depending upon the facts of an individual case and particularly at what stage of proceedings, requirement of sanction has surfaced.

20. In the case of ***Shambhoo Nath Misra v. State of U.P. & Ors.; 1997 (5) SCC 326***, the Hon’ble Supreme Court considered the question when the public servant is alleged to have committed the offence of fabrication of false record or misappropriation of public funds etc. Can he be said to have acted in discharge of official duties? Since it was not the duty of the



public servant to fabricate the false records, it was held that the official capacity only enabled him to fabricate the records and misappropriate the public funds hence it was not connected with the course of same transaction. The Hon'ble Supreme Court has also observed that performance of official duty under the colour of public authority cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime. The court during trial or inquiry has to apply its mind and record a finding on the issue that crime and official duty are integrally connected or not.

21. In another case, *S K Zutshi & Anr. vs. Bimal Debnath & Anr.*, (2004) 8 SCC 31, the Hon'ble Supreme Court has emphasized that official duty must have been official in nature. Official duty implies that the act or omission must have been official in nature. If the act is committed in the course of service but not in discharge of his duty and without any justification then the bar under Section 197 Cr.P.C. is not attracted.

22. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under [Section 197](#) of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under [Section 197](#) of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under [Section 197](#) of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving

opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.

23. In the present case, the allegation against the accused petitioner is that on 08.07.2010, when the complainant handed over the charge and list of documents, the accused petitioner was present and the Junior Assistant, Nitu Ranjan Dey was asked by the petitioner to give a receipt and accordingly, he gave a receipt. The complainant also handed over the keys of almirah to the accused petitioner. The complainant after retirement many times prayed before the authority to deliver the relevant document for submitting his pension papers, but the complainant did not get his pension for non-furnishing of his relevant documents. The entire keys of the office almirah were with the Principal, i.e., the present petitioner and all the documents were also kept in his custody. These facts are required to be established which can be done at the trial. Therefore, it is not possible to grant any relief to the petitioner at this stage.

24. However, it would be open to the accused person to adduce evidence in defence and to submit such other materials on record indicating that the incident has taken place in discharge of his official duties and the orders passed earlier would not come in the way of the learned trial court to decide the question afresh in the light of the aforesaid principles from stage to stage or even at the time of conclusion of the trial at the time of judgment. As at this stage it cannot be said which version is correct. The trial court has *prima facie* to proceed on the basis of prosecution version and can decide the question afresh in case from the evidence adduced by the prosecution or by the accused or in any other manner it comes to the notice of the court that there was a reasonable nexus of the incident with discharge of official duty, the court shall examine the question of sanction and take decision in accordance with law.

25. With the aforesaid observations, the Criminal revision stands disposed of.

JUDGE

Comparing Assistant