

**SUPREME COURT OF INDIA**

Fakhruzamma

Vs.

State of Jharkhand.

Crl.A.No. 2086 of 2013

(K.S. Radhakrishnan and A.K. Sikri, JJ.)

12.12.2013

**JUDGMENT**

**K.S. Radhakrishnan, J.**

1. Leave granted.

2. The question that has come up for consideration in this case is whether sanction under Section 197 Cr.P.C. is necessary from the State Government before prosecuting the Appellant, though he was removed from service following the procedure laid down in Jharkhand Police Manual.

3. The Sub-Divisional Judicial Magistrate, Giridih, in Complaint Case No.281 of 2003, T.R. No.835 OF 2006, took cognizance against the Appellant for various offences under Sections 456,323, 504, 506, 342, 386, 201, 120B and 304 IPC. That order was challenged by the Appellant before the High Court by filing Crl. M.P. No.1669 of 2006 under Section 482 Cr.P.C. stating that in the absence of previous sanction of the State Government, as per the provisions of Section 197Cr.P.C., the learned Magistrate could not have taken cognizance of the offences against the appellant who was a Sub- Inspector of Police, since the act alleged was committed while discharging his official duty. The High Court rejected that contention by holding that since the competent authority had removed the Appellant from service, sanction to prosecute under Section 197 Cr.P.C. was not warranted. Aggrieved by the same, this appeal has been preferred.

4. Shri S.K. Katriar, Senior Advocate, appearing for the Appellant, submitted that the High Court has committed an error in holding that no sanction under Section 197(1) Cr.P.C. was necessary before prosecuting the Appellant. The learned senior counsel submitted that the High Court failed to appreciate the ratio laid down by this Court in *Sankaran Moitra vs. Sadhna Das & Anr*<sup>1</sup>, and *Rakesh Kumar Mishra vs. State of Bihar & Ors*<sup>2</sup>, and erroneously held that no sanction was contemplated under Section 197 Cr.P.C. for prosecuting the Appellant.

5. Shri Jayesh Gaurav, Advocate, appearing for the Respondents, on the other hand, contended that the Appellant is a Sub-Inspector of Police and hence governed by the Jharkhand Police Manual and he can be removed from the service by the Inspector General of Police or the Deputy Inspector General of Police and for removal from service of a Sub-Inspector, no approval/sanction of the State Government is necessary and, hence, Section 197 Cr.P.C. would not apply to case of the Appellant. Learned counsel also submitted that the issue raised in this case stands covered by the judgment of this Court in *Nagraj vs. State of Mysore*<sup>3</sup>.

6. The Appellant's case is that he had arrested one Satyam Mirza (since deceased) for offences under Section 376(g) and 302 IPC. The case was registered at Police Station Gande where the Appellant was officiating as an office-in-charge. According to the Appellant, while returning from the spot led by the deceased in search of desi katta, the deceased jumped out of the running police vehicle TATA 407 and disappeared in the dark night in a dense forest and could not be located. Later, on 13.1.2003, he was found dead in the deep forest. The wife of the deceased Satyam Mirza filed a complaint against the Police stating that the deceased had died during police custody and to take appropriate action against the officials concerned. The learned Sub-Divisional Judicial Magistrate, on 4.7.2006, took cognizance of that complaint and registered case against the Appellant. As already stated, for quashing of that complaint, the Appellant approached the High Court on the ground that no sanction under Section 197 Cr.P.C. was obtained before taking cognizance by the learned Magistrate. The scope of Section 197 Cr.P.C. has to be examined in the light of the Jharkhand Police Manual. Section 197 Cr.P.C. is extracted herein below for an easy reference:-

“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.

a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "state Government" occurring therein, the expression "Central Government" were substituted.

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

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

7. The above-mentioned provision clearly indicates that previous sanction is required for

prosecuting only such public servants who could be removed by sanction of the Government. Rule 824 of the Jharkhand Police Manual prescribes different departmental punishments, including the punishment of dismissal and removal, to be inflicted upon the police officers up to the rank of Inspector of Police. The relevant Rule for our purpose is Rule 825, which is given below:

“825. Officers empowered to impose punishment. – (a) No police officer shall be dismissed or compulsorily retired by an authority subordinate to that which appointed him.

(b) The Inspector-General may award to any police officer below the rank of Deputy Superintendent any one or more of the punishments in rule 825.

(c) xxx xxx xxx

(d) A Superintendent may impose on any police officer subordinate to him and of and below the rank of Sub-Inspector any or more of the punishments in rule 824 except dismissal; removal and compulsory retirement in the case of Sub-Inspector or Assistant Sub-Inspector. It shall be kept in mind that if any enquiry has been initiated by the District Magistrate, a report of the result shall be sent to him for information. If required, the file of departmental proceeding shall also be sent with it.

(e) xxx xxx xxx

(f) xxx xxx xxx.”

8. Rule 825, clauses (a) and (b) confers power on the Inspector General of Police or the Deputy Inspector General of Police to pass orders for removal of police officers up to the rank of Inspector. Before passing the order of removal, the Inspector General of Police or the Deputy Inspector General of Police need not obtain prior approval of the State Government. A similar issue came up for consideration before this Court in Nagraj’s case (supra), wherein this Court was called upon to examine the scope of Section 197 Cr.P.C. read with Section 4(c), 8, 26(1) and 3 of the Mysore Police Act, 1908. Interpreting the above-mentioned provisions, a Three-Judge Bench of this Court held that an Inspector General of Police can dismiss a Sub-Inspector and, therefore, no sanction of the State Government for prosecution of the appellant was necessary even if he had committed the offences alleged while acting or purporting to act in discharge of this official duty.

9. The judgment referred to by the Appellant, such as, Rakesh Kumar Mishra (supra) is not applicable to the case in hand. The question raised, in our view, is directly covered by the judgment of this Court in Nagraj’s case (supra) and the High Court was right in applying the ratio laid down in that case while interpreting the provisions of the Jharkhand Police Manual and we fully endorse the view of the High Court.

10. In the circumstances, we find no merit in this Appeal and the same stands dismissed.

*Judgment referred*

<sup>1</sup>2006 (4) SCC 0584

<sup>2</sup>2006 (1) SCC 0557

<sup>3</sup>AIR 1964 SC 0269