RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Criminal Revision Petition No. 1276/2014
CNR: RJHC010153822014 | URN: CRLR / 2771U / 2014

Rajasthan High Court
सत्यमेव जयते
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Ganga Singh S/o Shri Karni Singh ,R/o Kailashpuri Gandhi Colony ,P.S. Sadar Distt. Bikaner.

----Petitioner

Versus

1. State of Rajasthan Through, Its P.P
2. Bhupendra Singh S/o Mahesh Dan Charan, B/c Charan, R/o Chandawal, P.S. Sojat City, District Pali.
3. Surendra Kumar S/o Parbhati Lal, B/c Meena, R/o Udaipurwati, P.S. Udaipurwati, District Jhunjhunu.
4. Ramchandra S/o Bhinya Ram, B/c Jat, R/o Barjangsar, Teh. Sri Dungargarh, District Bikaner.
5. Ram Lal, S/o Bhinya Ram, B/c Jat, R/o Barjangsar, Teh. Sri Dungargarh, District Bikaner.

----Respondent

For Petitioner(s) : Mr. D.S. Gharsana
For Respondent(s) : Mr.Narendra Gehlot

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable-

12/10/2026

1. By way of filing the instant criminal revision petition, the petitioner has assailed the order dated 07.10.2013 passed by the learned Sessions Judge, Bikaner, in Criminal Revision No.135/2010 (Bhupendra Singh v. State & Anr.), whereby the order dated 17.04.2010 passed by the learned Additional Chief Judicial Magistrate No.2, Bikaner, taking cognizance against the accused-respondents for the offences punishable under Sections 452, 323,

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325 and 120-B IPC, was set aside and the accused-respondents were discharged.

2. Grievance of the petitioner: Learned counsel for the petitioner submits that the revisional court has committed a manifest error of law in extending the protection of Section 197 Cr.P.C. to the accused-respondents merely because they happened to be police personnel and had visited the complainant's residence in connection with the execution of a warrant. It is contended that the alleged acts of assaulting the complainant and his mother, inflicting injuries upon them and forcibly taking the complainant to the police station cannot, by any stretch of interpretation, be treated as acts forming part of official duty. The authority to arrest does not carry with it an unfettered licence to inflict physical violence upon citizens. It is further submitted that the learned Magistrate, after recording the statements under Sections 200 and 202 Cr.P.C., had rightly found sufficient grounds to proceed against the accused-respondents, and the revisional court exceeded its jurisdiction in substituting its own assessment of the disputed facts and discharging them at the threshold.

3. Facts of the case: Briefly stated, the petitioner lodged a private complaint alleging that on the date of the incident, while he was present at his residence, the accused-respondents arrived there and enquired about his brother, Durga Singh. Upon being informed that his brother was not at home, the petitioner questioned the purpose of their visit, whereupon the accused persons allegedly

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became aggressive and assaulted him. On hearing the commotion, his mother, Nain Kanwar, intervened to rescue him, but accused Bhupendra Singh allegedly struck her on the mouth with a danda, resulting in the breaking of one of her teeth and bleeding. It was further alleged that the other accused persons bit her hand and subjected her to physical assault. Thereafter, the petitioner was forcibly taken to the police station, where he was allegedly beaten again and made to sign blank papers. Upon examination of the complaint and the statements recorded under Sections 200 and 202 Cr.P.C., the learned Magistrate, vide order dated 17.04.2010, took cognizance of the aforesaid offences against the accused-respondents. However, in revision, the learned Sessions Judge, vide the impugned order dated 07.10.2013, set aside the order of cognizance primarily on the ground that the accused persons were police officials acting in discharge of their official duties and, therefore, prior sanction under Section 197 Cr.P.C. was indispensable.

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4. Heard learned counsel for the parties and perused the material available on record.

5. The controversy essentially revolves around the applicability and ambit of Section 197 Cr.P.C. The provision is undoubtedly a statutory safeguard intended to protect public servants from vexatious prosecution in respect of acts performed in the discharge, or purported discharge, of their official functions. However, the protection is neither absolute nor automatically

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attracted by virtue of the official status of the accused. The mere fact that a person is a police officer does not confer immunity from criminal prosecution for every act committed by him during the course of employment.

The statutory protection is attracted only when the alleged offence has been committed by a public servant who satisfies the conditions prescribed under the provision and the act complained of bears a reasonable and direct nexus with the discharge of his official duties. The expression *"while acting or purporting to act in the discharge of his official duty"* cannot be interpreted so expansively as to encompass acts which are wholly extraneous to the lawful exercise of official authority.

6. The Hon'ble Supreme Court, in *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44, explained that there must be a reasonable connection between the act complained of and the discharge of official duty. The connection must not be merely fanciful or pretended. Similarly, in *B. Saha v. M.S. Kochar*, (1979) 4 SCC 177, the Hon'ble Apex Court clarified that the relevant consideration is not merely whether the public servant had an opportunity to commit the offence by virtue of his office, but whether the act complained of was reasonably connected with the performance of his official functions.

In *P.K. Pradhan v. State of Sikkim*, (2001) 6 SCC 704, the Hon'ble Supreme Court reiterated that the question of sanction has to be examined with reference to the nature of the allegations and the

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circumstances in which the alleged act was committed. The requirement of sanction cannot be determined by applying a mechanical or inflexible formula.

7. It is equally significant that the protection under Section 197 Cr.P.C. cannot be converted into a protective umbrella for acts of gratuitous violence or abuse of official authority. The power to arrest a person, execute a warrant or maintain law and order undoubtedly forms part of the legitimate functions of the police. Nevertheless, such authority does not extend to inflicting punitive or retaliatory physical injuries upon a person. The law authorises the use of only such force as may be reasonably necessary in the lawful execution of official functions; it does not authorise police personnel to administer punishment on their own.

The distinction between an act committed in the exercise of official authority and an act committed by abusing such authority must, therefore, be scrupulously maintained. The fact that an incident occurred during an official assignment, or at a place visited by police personnel in connection with an arrest, cannot by itself establish the requisite nexus contemplated under Section 197 Cr.P.C.

8. In this regard, the judgment of the Hon'ble Supreme Court in *D. Devaraja v. Owais Sabeer Hussain*, (2020) 7 SCC 695, deserves consideration. The Court held that even an act in excess of official authority may attract protection if it bears a reasonable connection with the performance of official duty. However, the

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protection cannot be claimed merely because the accused was discharging an official assignment when the alleged offence occurred. The nature and quality of the act, and its proximity to the official function, remain decisive considerations.

The decision in *D.T. Virupakshappa v. C. Subash*, (2015) 12 SCC 231, also illustrates that police excesses committed in the course of investigation may, depending upon the factual circumstances, retain a reasonable nexus with official duty. However, the applicability of Section 197 is essentially fact-specific and cannot be determined merely by the designation of the accused or the fact that an official assignment was being undertaken.

9. More importantly, in *Dr. S.M. Mansoori (Dead) through LRs v. Surekha Parmar & Ors.*, 2023 SCC OnLine SC 436, the Hon'ble Supreme Court dealt with allegations of assault by police personnel who had visited the complainant's residence in connection with the arrest of certain persons. The Court held that, having regard to the nature of the allegations and the stage of proceedings, it was premature to conclude that the alleged acts were committed in discharge of official duty and that sanction under Section 197 Cr.P.C. was necessarily required. The Court restored the order of the learned Trial Court and clarified that the question of sanction could be examined at an appropriate stage after evidence was brought on record.

The aforesaid pronouncement is particularly instructive in the present matter. It reinforces the principle that the question of

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sanction cannot be decided merely on the basis of the fact that police personnel had visited the premises for effecting an arrest. The allegations constituting the offence must independently be examined to ascertain whether they bear the requisite nexus with official duty.

10. Adverting to the facts of the present case, it is not in dispute that the accused-respondents had visited the complainant's residence in connection with the apprehension of Durga Singh and that they were police personnel. Even assuming that their initial visit was pursuant to a lawful warrant, the same circumstance cannot, by itself, legitimise every act allegedly committed thereafter. The complaint specifically alleges that the petitioner was assaulted at his residence and that his mother, who intervened to rescue him, was struck on her mouth with a danda, resulting in the breaking of her tooth. Further allegations have been levelled regarding assault upon her by the other accused persons and subsequent beating of the petitioner at the police station.

The authority to apprehend a person cannot be equated with the authority to assault his family members or inflict injuries upon persons who intervene at the scene. Such conduct, if established, would constitute an abuse of official position rather than an ordinary incident of the lawful execution of a warrant. No police officer is vested with the authority to break the bones or teeth of a citizen under the pretext of performing official duty. Physical

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violence, unless justified by the lawful and reasonable necessities of the situation, cannot be elevated to the status of an official function.

The allegations in the complaint, therefore, could not have been brushed aside merely on the ground that the accused persons were performing an official assignment. At the least, the nature of the alleged assault and its connection, if any, with the lawful exercise of police powers required consideration on the basis of the material available, rather than being conclusively determined in favour of the accused at the threshold.

11. Another aspect which appears to have weighed with the learned revisional court is the absence of conclusive medical proof establishing that the tooth of the complainant's mother was broken in the alleged occurrence. In the considered opinion of this Court, such an approach is premature at the stage of taking cognizance. The scope of inquiry at this stage is confined to ascertaining whether the complaint and the evidence recorded during the preliminary inquiry disclose sufficient grounds for proceeding against the accused persons. The Court is not required to undertake a meticulous evaluation of the evidence or insist upon conclusive proof of each ingredient of the alleged offence.

The statements of the complainant and the other witnesses, if taken at their face value, disclose a specific allegation that a blow was inflicted upon the mouth of the complainant's mother, resulting in the breaking of her tooth. Whether the tooth was

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already damaged, whether the alleged blow actually caused its fracture or dislocation, and whether the medical evidence sufficiently corroborates the ocular account are matters which must be tested during the appropriate stage of proceedings. The absence of conclusive medical corroboration at the preliminary stage cannot, by itself, extinguish otherwise specific and consistent allegations made in the complaint.

12. It is also pertinent to observe that the learned revisional court appears to have entered into a comparative appreciation of the injury reports of the accused persons and the complainant's side, drawn inferences regarding the genuineness of the complaint and accepted the defence version concerning the incident as conclusive. Such an exercise was not warranted while examining the legality of the order taking cognizance. The existence of a cross-version or an FIR lodged by the police personnel does not, by itself, render the private complaint false or legally unsustainable. The rival versions must be tested in accordance with law and cannot be conclusively adjudicated at the threshold.

13. This Court is conscious of the fact that Section 197 Cr.P.C. is an important statutory safeguard and that its applicability may arise at different stages of criminal proceedings. However, such protection cannot be presumed merely from the official designation of the accused. The statutory requirement concerning the status and removability of the public servant must also be satisfied, apart from the existence of the requisite nexus with

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official duty. In the present case, the impugned order does not disclose a satisfactory examination of these distinct statutory requirements.

In the facts and circumstances of the present case, the allegations of assault, particularly the alleged infliction of injuries upon the complainant's mother, cannot be treated as acts automatically protected by Section 197 Cr.P.C. merely because the accused persons had gone to the complainant's residence to execute a warrant. The question whether any particular act was reasonably connected with the performance of official duty, or constituted an independent act of criminal misconduct, must be determined in accordance with the evidence and the settled principles of law.

It is, therefore, clarified that the present determination is confined to the legality of the impugned revisional order and shall not prejudice the accused persons from raising the question of sanction at an appropriate stage, if the material subsequently brought on record warrants such consideration.

14. In view of the foregoing discussion, this Court is of the considered opinion that the learned Sessions Judge fell into error in setting aside the order of cognizance solely by extending the protection of Section 197 Cr.P.C. to the accused-respondents without properly examining the nature of the alleged acts and their nexus with official duty. The impugned order, therefore, suffers from legal infirmity and cannot be sustained.

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15. Accordingly, the instant criminal revision petition is allowed. The order dated 07.10.2013 passed by the learned Sessions Judge, Bikaner, is hereby set aside. Consequently, the order dated 17.04.2010 passed by the learned Additional Chief Judicial Magistrate No.2, Bikaner, taking cognizance against the accused-respondents for the offences punishable under Sections 452, 323, 325 and 120-B IPC, is restored and affirmed.

The matter is remanded to the learned Trial Court for proceeding further in accordance with law. The learned Trial Court shall proceed with the matter from the stage at which it stood prior to the passing of the impugned revisional order, without being influenced by any observations made herein on the merits of the allegations.

16. All pending applications, if any, stand disposed of.

(FARJAND ALI),J

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