Ct Cases 827/2020
Jamia Millia Islamia Vs. State

03.02.2021

Present: None for applicant/ complainant.

This order of mine shall dispose off the application u/s 156 (3) Cr.P.C. filed by the applicant/ complainant.

The above mentioned application was filed by applicant stating therein that on 15.12.2019, civil society members decided to call a peaceful protest near Jamia Millia Islamia University area against Citizenship Amendment Act. That in pursuit of clearing the crowd, police officials broke into the University Campus without seeking any sanction and used excessive and arbitrary force and thrashed several security guards of the University and also University Students. That the said police officials caused destruction of University property and fired tear gas shells and conducted *lathi charge.* That they also hurt religious sentiments of locals of the area by entering into the University Mosque. That complainant gave a complaint dated 16.12.2019 to the SHO PS Jamia Nagar and concerned ACP and DCP in this regard. That no action was taken on the said complaints. Hence, the present application.

ATR was called from the concerned SHO in the present matter. It has been stated in the said ATR that on 15.12.2019, students of applicant University had gathered to

protest against Citizenship Amendment Act and that they were instigated by local leaders and politicians and that the gathering had swelled to around 3500 people. That deployment of anti-riot staff was done as per the standard protocol and that the said crowd was armed and set several vehicles on fire and that FIR bearing no. 242/2019 and FIR bearing no. 298/2019 have already been registered in this regard against the miscreants. It has further been stated in the ATR that the said mob / crowd went inside the University campus and started pelting stones on the police and raised provocative slogans and that in order to maintain law and order situation, police had to enter the University Campus and contain the mob by detaining some persons.

I have heard the arguments and perused the record carefully.

In nutshell, gist of allegations levelled by applicant in the present matter is that respondents committed various atrocities, including but not limited to, vandalizing public/ University property and unnecessary use of force against hapless students who were only exercising their democratic right to protest peacefully. There is no dispute that all the allegations that have been levelled by the applicant are against serving police officials, who are 'public servants' within the meaning of section 21 IPC. Since all the alleged acts are said to have been committed by serving public servants, it must foremost be seen as to whether present matter falls within the ambit of section 197 Cr.P.C.

Section 197 of the Code of Criminal Procedure 1973 reads as under:

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.

The thought and purpose behind enacting section 197 Cr.P.C. was explained by the Hon'ble Apex Court in the case of ***Matajog Dubey v H C Bhari*** (AIR 1956 SC 44) as under:

"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. 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."

The same was reiterated by the Hon'ble Apex court in the case of ***D. Devaraja v Owais Sabeer Hussain*** (decided in Criminal Appeal no. 458/2020 on 18.06.2020)

by stating that object of sanction for prosecution under section 197 of the Code of Criminal Procedure is to protect a public servant/police officer discharging official duties and functions from harassment by initiation of frivolous retaliatory criminal proceedings.

Provisions of section 197 Cr.P.C. being mandatory in nature, it must now be seen as to whether alleged actions said to have been committed by the respondents are covered within the protective umbrella of section 197 Cr.P.C. or not. Tests and yardsticks for determining as to whether alleged acts will be covered within the ambit of section 197 Cr.P.C. have been laid down in a catena of landmark cases. It was held in the case of ***State of Orissa v Ganesh Chandra Jew*** [(2004) 8 SCC 40] that the expression 'official duty' implies that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. It was further observed that section 197 Cr.P.C. does not extend its protective cover to every act or omission done by a public servant while in service and that the scope of operation of the Section is restricted to only those acts or omissions which are done by a public servant in discharge of official duty. It was further held in the said case that 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 of 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 Cr.P.C. 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 official 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.

Explaining the scope and ambit of section 197 Cr.P.C., it was held in the case of ***Pukhraj v State of Rajasthan*** [(1973) 2 SCC 701] that "*While the law is well settled, the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is*

to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant".

It was held in the case of ***Amrik Singh v State of PEPSU*** (AIR 1955 SC 309) that it is not every offence

committed by a public servant that requires sanction for prosecution under section 197 Cr.P.C., but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution.

Explaining the manner in which provisions of section 197 Cr.P.C. must be construed and applied, it was held by the Hon'ble Supreme Court in the case of ***Shreekantiah Munipalli v State of Bombay*** (AIR 1955 SC 287) that provisions of section 197 Cr.P.C. must not be construed too narrowly and that for an act be covered under the said section, it can be performed in the discharge of official duty as well as in dereliction of it.

In a case dealing with allegations of police excesses, it was held by the Hon'ble Apex Court in the case of ***Om Prakash v State of Jharkhand*** [(2012) 12 SCC 72] that:

"*The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be*

whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant Singh [AIR 1960 SC 266]). The protection given under section 197 of the Code 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 of the protection (Ganesh Chandra Jew [(2004) 8 SCC 40]). If the above tests are applied to the facts of the present case, the police must get protection given under section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood".

Further elaborating the scope and intent of section 197 Cr.P.C., it was held in the case of ***D. Devaraja v Owais Sabeer Hussain*** *(Supra)* that:

"*68. Sanction of the Government, to prosecute a police*

officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate government.

69. Every offence committed by a police officer does not attract section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act.

70. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a police man assaulting a

domestic help or indulging in domestic violence would certainly not be entitled to protection. However, if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

71. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of government sanction for initiation of criminal action against him.

72. The language and tenor of section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.

73. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his

powers and/or acted beyond the four corners of law.

74. If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate government is obtained under section 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act".

Few requirements emerge as essential in order to invoke provisions of section 197 Cr.P.C. in view of the law laid down with respect to the said section. The said requirements may be summarized as under:

a) The act or omission must have been committed by a public servant;
b) Such act or omission must be in discharge of his official duties or in the purported discharge thereof;
c) Such act or omission must have reasonable nexus with official duties of the public servant;
d) The act or omission must not be wholly or entirely outside the scope of duty of a public servant;

In order to bring a case under the provisions of section 197 Cr.P.C., it must be seen that discharge of official duty is not merely a cloak for committing the act in question and that there is reasonable nexus between the alleged act and official duties of the public servant concerned. If there exists such a reasonable nexus, then even the fact

that the alleged act might have been in excess of or in derogation of prescribed scope of duties will not take out the case from within the ambit of section 197 Cr.P.C. and protection afforded by section 197 Cr.P.C. will be available to the public servant in such cases.

In the instant case, it is an undisputed fact that all the respondents were acting in order to control law and order situation which had emerged in relation to the Citizenship (Amendment) Act, 2019. It is also an undisputed fact that many students of applicant University were also protesting against the same and participating in what has been popularly referred to as "Anti-CAA Protests". It cannot be denied that the said protests had taken a violent turn in many parts of the country and that law and order situation had become tense. It has been argued by Ld. Counsel for applicant that the said violence was due to some anti-social elements and that the protests being held by students of applicant University were largely peaceful. However, the argument is not relevant here as it is not for this court to determine this issue in the present proceedings. But one aspect which is clear from the factual background is that some of the protests had become violent and that police, including the respondents, were acting to control the said protests at the relevant point of time, so as to prevent violence and prevent law and order situation from further

deteriorating. Though it could be argued that while so acting, the police/ respondents had allegedly exceeded their jurisdiction and used more force than necessary in some instances, it cannot be said, by any stretch of imagination, that the said acts allegedly committed by the respondents were wholly unconnected to their official duty. Likewise, it could also be argued that the situation perhaps could have been handled by the respondents in a better way and that some restraint should have been shown by the police/ respondents in order to differentiate between peaceful student protesters and anti-social elements who had attempted to hijack the entire movement. However, the lack of such restraint exhibited by the police/ respondents and excesses committed in trying to control the situation are very much related to official duties of the respondents. It has been stated in para 17 of the present application itself that respondents had broken into the University Campus for clearing the crowd which had gathered there to protest against Citizenship (Amendment) Act, 2019. Thus, actions of respondents in doing so are clearly connected to their official duties, though some of the said actions might be questionable. This court has no hesitation in holding that acts allegedly committed by the respondents fall within the purview of section 197 Cr.P.C., being acts committed in discharge of official duties.

Having come to the above mentioned conclusion, it must now be seen as to whether the bar contained in section 197 Cr.P.C. would come into play even at the stage of consideration of application for registration of FIR under section 156(3) Cr.P.C. It would be apposite to refer to the law laid down by the Hon'ble Apex Court in the case of ***Anil Kumar v M K Aiyappa*** [(2013) 10 SCC 705] in this regard. It was held in the said case that "*when a Special Judge refers a complaint for investigation under section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage*". The court then went on to examine the question as to whether there is the requirement of sanction is a pre-condition for ordering investigation under section 156(3) Cr.P.C., even at a pre-cognizance stage, it was held that "*Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh and Subramanium Swamy cases (supra)*".

Thus, as per law down by the Hon'ble Supreme Court in the case of ***Anil Kumar v M K Aiyappa***

(Supra), existence of requisite sanction is a must even before jurisdiction under section 156(3) Cr.P.C. could be exercised. That being so, present application cannot be allowed for want of sanction under section 197 Cr.P.C.

In view of the above discussion, **present application u/s 156(3) Cr.P.C. and accompanying complaint are hereby dismissed**.

File be consigned to the record room after due compliance.

(Rajat Goyal)
MM-08 (SE): Saket Courts
New Delhi: 03.02.2021