CASE NO.:
Appeal (crl.) 755 of 2002

PETITIONER:
RAJ KISHOR ROY

Vs.

RESPONDENT:
KAMLESHWAR PANDEY & ANR.

DATE OF JUDGMENT: 05/08/2002

BENCH:
Syed Shah Mohammed Quadri & S. N. Variava.

JUDGMENT:

S. N. Variava, J.

Leave granted.
Heard parties.

This Appeal is against the judgment and order dated 25th April, 2001 by which the High Court has quashed an order dated 16th April, 1998 passed by the Judicial Magistrate, Bhagalpur. By the said order the Judicial Magistrate had taken cognizance of a complaint under Sections 323/324/504 of the Indian Penal Code and issued summons to the 1st Respondent.

Briefly stated the facts are as follows:

The Appellant made a complaint that the 1st Respondent, who is a Police Officer, had harassed, levelled false charges and involved the Appellant and his brother in a false case. In the complaint, it is recited that the 1st Respondent had falsely implicated the Appellant by stating as follows:

"You have earned a lot in Lalmatia but we have not been paid/served. You will be taught a lesson."

The complaint also is that the 1st Respondent assaulted the Appellant and his brother at their house and thereafter at the Police Station. It is claimed, in the complaint, that the 1st Respondent brought an illegal weapon and cartridges, put them on the table at the Police Station and falsely alleged that these weapon and cartridges were recovered from the Appellant and his brother. It is claimed that when the Appellant and his brother protested, the 1st Respondent threatened that they would be shot by showing encounter.

On this complaint, the Judicial Magistrate, Bhagalpur by his order dated 16th April, 1998 found that a prima facie case has been made out and issued summons. The 1st Respondent filed a Criminal Miscellaneous Petition in the High Court for quashing the order dated 16th April, 1998, inter alia, on the ground that sanction under Section 197 of the Code of Criminal Procedure had not been obtained. By the impugned judgment and order dated 25th April, 2001, the High Court has held that even if the facts narrated

in the complaint are taken to be true, then also they would come within the purview of Section 197 of the Code of Criminal Procedure. It has been held that the 1st Respondent could only be said to have over acted in the discharge of his duties and thus could only be prosecuted after sanction is obtained from the appropriate authority.

The law on the subject is well settled. It has been held by this Court in the case of P.P. Unnikrishnan and another v/s Puttiyottil Alikutty and another, reported in 2000(8) SCC 131 that under Section 197 of the Criminal Procedure Code no protection has been granted to the public servant if the act complained of is not in connection with the discharge of his duty or in excuse of his duty.

In the case of P.K. Pradhan v/s State of Sikkim reported in 2001(6) SCC 704, it has been held that the legislative mandate engrafted in sub-section (1) of Section 197 is a prohibition imposed by the statute from taking cognizance. It has been held that 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. It has been held that the only point for determination is whether the act was committed in discharge of official duty. It has been held that there must be a reasonable connection between the act and the official duty. It has been held that 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, and the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. It has been held that if the case as put forth 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 held that the question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. It is held that there can be cases when 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. It has been held that the 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. It has been held that 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.

Mr. Nageswara Rao sought to support the order of the High Court by placing reliance on the case of Matajog Dobey v/s H.C. Bhari reported in 1955(2) SCR 925. This was a case where the investigating officers went, with a search warrant, to search a place. They were obstructed in performance of their duties. They had thus broken open the door of flat and the lock of a door of a room. It was held that these were acts which were performed in the course of the duty. This finding is thus on facts of that case. In this case it has also been held that the need for sanction under Section 197 of the Criminal Procedure Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. It is held that this question may arise at any stage of the proceedings. It is held that the question whether sanction is necessary or not may have to be determined from stage to stage. Thus far from helping the 1st Respondent this authority also supports the proposition that in certain cases, depending on the nature of the acts complained of, the complaint cannot be quashed at the initial stage itself.

Mr. Nagesware Rao also relied on the decisions of this Court in State of Maharashtra v/s Dr. Budhikota Subbarao reported in 1993(3) SCC 339 and State through the CBI v/s B.L. Verma and another reported in 1997(10) SCC 772. These two authorities merely lay down the general proposition of law that the bar under Section 197 of the Criminal Procedure

Code is mandatory where the act has been done by the public servant in the course of his service or in the discharge of his duty. There can be no dispute with that proposition.

In this case, as indicated above, the complaint was that the 1st Respondent had falsely implicated the Appellant and his brother in order to teach them a lesson for not paying anything to him. The complaint was that the 1st Respondent had brought illegal weapon and cartridges and falsely shown them to have been recovered from the Appellant and his brother. The High Court was not right in saying that even if these facts are true then also the case would come within the purview of Section 197 Cr.P.C. The question whether these acts were committed and/or whether 1st Respondent acted in discharge of his duties could not have been decided in this summary fashion. This is the type of case where the prosecution must be given an opportunity to establish its case by evidence and an opportunity given to the defence to establish that he had been acting in the official course of his duty. The question whether the 1st Respondent acted in the course of performance of duties and/or whether the defence is pretended or fanciful can only be examined during the course of trial. In our view, in this case the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of trial.

We, therefore, set aside the order dated 25th April, 2001. The Judicial Magistrate shall now proceed with the case in accordance with law.