



**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on:07.05.2025

+ **CRL.REV.P. 426/2023**

**KASHMIRI LAL**

.....Petitioner

versus

**STATE & ANR.**

.....Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr. Ashutosh Kaushik, Advocate.

For the Respondent : Mr. Naresh Kumar Chahar, APP for the  
State.  
SI Bharat Singh (P.S. Uttam Nagar).

**CORAM**

**HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**

1. The present petition has been filed assailing the order dated 12.01.2023 (hereafter '**the impugned order**') passed by the learned Additional Sessions Judge-02, South-West District, Dwarka Courts, New Delhi, in Complaint Case No. 491/2022 titled *Kashmiri Lal & Ors. v. Arun Kumar*.

2. The learned ASJ, by the impugned order, dismissed the application filed by the petitioner under Sections 156(3) and 200 of the Code of Criminal Procedure, 1973 ('**CrPC**') seeking registration of FIR and summoning of Respondent No.2, for alleged offences



under Sections 182/193/211 of the Indian Penal Code, 1860 ('**IPC**') and Section 3(1)(p) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('**SC/ST Act**').

3. The facts giving rise to the present petition are that the petitioner is a member of a Scheduled Caste, as evidenced by a caste certificate placed on record. His son was operating a motorcycle repair shop in Uttam Nagar, New Delhi, in the year 2010. Respondent No. 2, Arun Kumar, was at the relevant time posted as a Head Constable with the Delhi Police.

4. According to the petitioner, on 26.12.2010, the respondent visited the garage for motorcycle repairs and upon being asked to pay the service charges, allegedly refused and began hurling caste-based abuses at the petitioner and his family. An altercation is said to have ensued, following which FIR No. 426/2010 was registered at PS Uttam Nagar against the petitioner, his wife, and his son under Sections 186/332/353/34 of the IPC.

5. A trial followed, and by judgment dated 18.05.2022, the learned Metropolitan Magistrate acquitted all the accused, including the present petitioner. The learned Trial Court observed that the prosecution had failed to establish its case beyond reasonable doubt and questioned the credibility of the prosecution version.

6. Following the acquittal, the petitioner on 13.06.2022 filed a complaint before various police authorities, including the Commissioner of Police, seeking registration of FIR against Respondent No. 2 for initiating a false case and using caste-based



slurs. When no action ensued, the petitioner instituted Complaint Case No. 491/2022 under Sections 182/193/211 of the IPC read with Section 3(1)(p) of the SC/ST Act along with an application under Section 156(3) of the CrPC for investigation.

7. As noted above, the learned ASJ dismissed the complaint by the impugned order holding that there was no material to justify registration of FIR or to summon Respondent No.2 as an accused. The relevant portion of the impugned order reads as under :

*“11. It is matter of record that alleged accused person Arun Kumar who was posted as Head Constable at PS Uttam Nagar, in his complaint dated 26 12.2010 mentioned that complainants on the date of incident were found doing illegal boring and when he tried to stop them, then complainants caught hold of his neck, pushed him and also torn his Police uniform. Nowhere in entire body of the complaint, it is mentioned that the complainant filed the said complaint with the knowledge that complainants were the members of Scheduled caste community. Nonetheless, the Trial Court nowhere in the judgment dated 18.05.2022 mentioned the falsity of the allegations made in the complaint by the alleged accused person*

*12. It is matter of record in the said case, the statement of complainants herein were recorded U/s 313 Cr.P.C. wherein both of them stated that they were not present at the spot and they were falsely implicated in that case. It is a matter of record that complainants did not take a plea that the complaint was filed against them by HC Arun as they were members of Scheduled Caste rather facts of the case shows that the alleged complaint was filed by HC Arun on the premise that the complainants were obstructing the road and they used criminal force against HC Arun Kumar a public servant.*

*13. There is another facer so the case as well. HC Arun Kumar was examined in case FIR No 426/2010 as PW1 and in his entire cross-examination, there was no suggestion put to him that he was aware of the caste of complainant or the complaint was lodged by ham due to the fact that the complainants were members of Scheduled Caste community.*



*14. Nonetheless, as stated above, there is no finding in the judgment dated 18.05.2022 rendered in case FIR No. 426/2010 PS Uttam Nagar that FIR initiated on the complaint of accused was false, malicious or vexatious nor there is any finding of the Court that accused gave any false information to the Court. Hence, there is no ground to proceed against accused for the offence U/s 3(1)(p) SC/ST Act.*

*15. Complainants have further alleged commission of offences U/s 182/193/211 IPC. Section 182 IPC pertains to offence relating to give false information, Section 193 IPC prescribes punishment to a person who gives false evidence and Section 211 IPC prescribes punishment to a person who institutes criminal proceedings with knowledge that there is no lawful or just ground to proceed against the other person.*

*16. As stated above there is nothing on record which suggests that alleged accused gave false information to cause injury to the complainants or he is guilty of giving false evidence or initiate criminal proceedings without any lawful or justifiable ground. Accordingly, there is no material on record to proceed against accused for U/s 182/193/211 IPC.”*

8. The learned counsel for the petitioner submitted that the learned ASJ erred in passing the impugned order. He submitted that the filing of FIR No. 426/2010 was malicious and false. It was contended that the acquittal of the petitioner and his family after a decade-long trial vindicates the petitioner’s version and supports his claim that the complaint made by the respondent was without basis.

9. It was urged that the caste-based abuses and the misuse of police machinery by the respondent attracted the provisions of Section 3(1)(p) of the SC/ST Act, which penalizes instituting false or vexatious proceedings against members of Scheduled Castes. It was further argued that Section 197 CrPC would not apply in the facts of this case since the alleged acts were not committed in discharge of official duties.



10. *Per Contra*, the learned Additional Public Prosecutor for the State opposed the petition and submitted that the acts attributed to Respondent No.2, including the lodging of the FIR, were performed in his capacity as a public servant in the discharge of official duties. Therefore, in the absence of prior sanction under Section 197 of the CrPC, no cognizance could be taken.

11. It was further argued that mere acquittal of the petitioner in a prior case does not automatically make the original complaint false or malicious. The petitioner has failed to bring on record any evidence to show that the respondent had acted with mala fide intent or that he was not discharging his official duty.

### **Analysis**

12. The principal issue arising for determination is whether the learned ASJ was justified in rejecting the petitioner's complaint at the pre-summoning stage in the absence of prior sanction under Section 197 of the CrPC, and whether a *prima facie* case for prosecution was made out against the respondent.

13. Before delving into the question of the correctness of the impugned order, it is pertinent to briefly examine Section 197 of the CrPC and Section 140 of the Delhi Police Act, 1978.

*“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 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]— (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.] [Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 166-A, Section 166-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 370, Section 375, Section 376, [Section 376-A, Section 376-AB, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB] or Section 509 of the Indian Penal Code (45 of 1860).]*

*(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.*

*[(3-A) 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.*

*(3-B) 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.”*

*“140. Bar to suits and prosecution.—*

*(1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character as aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of: Provided that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.*

*(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrongdoer not less than one month's notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed.*

*(3) The plaint shall set forth that the notice as aforesaid has been served on the defendant and the date of such service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof.”*

14. Upon a conjoint reading of Section 197 of the CrPC and Section 140 of the Delhi Police Act, 1978 it is evident that a prior sanction is



required to prosecute the public servant/police officer but for certain exceptions provided in Section 197 of the CrPC. Further, the language materialised under Section 140 of the Delhi Police Act, 1978 makes it clear that sanction is required not only for acts done in discharge of official duty but also for acts done in excess of such duty. The purpose of necessitating a prior sanction to prosecute public servants finds its genesis in the need to safeguard public interest and to ensure that official acts do not result in vexatious prosecutions.

15. For this reason, the Hon'ble Apex Court in the case of *State of Orissa v. Ganesh Chandra Jew : (2004) 8 SCC 40* while delineating the scope of Section 197 of the CrPC noted that such acts that have a reasonable nexus with the performance of official duty would not be deprived of protection. The relevant observations are reproduced as:

*7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. 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 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. There cannot be any 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. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

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11. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is, under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far as its official nature is concerned. For instance, a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. **But once it is established that the act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as**



*to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance, a police officer in discharge of duty may have to use force, which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in the course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted....”*

(emphasis supplied)

16. The same was reiterated by the Hon’ble Apex Court in the case of ***D. Devaraja v. Owais Sabeer Hussain : (2020) 7 SCC 695***

*“68. 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 the government sanction for initiation of criminal action against him.*

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*70. 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.”*

(emphasis supplied)

17. In the present case, it is not disputed that Respondent No.2 was a serving police officer at the time of the incident and FIR No. 426/2010 was recorded on his complaint alleging that he had been assaulted while performing his official duties. The prosecution in that FIR culminated in the acquittal of the petitioner and his family, *vide* judgment dated 18.05.2022. The complaint filed by the petitioner



under Section 156(3) of the CrPC now seeks to prosecute Respondent No.2 for allegedly lodging a false complaint, giving false evidence, and using caste-based slurs—offences punishable under Sections 182/193/211 of the IPC and Section 3(1)(p) of the SC/ST Act.

18. The act of lodging a complaint in relation to obstruction or assault on a police officer during the discharge of official duty is squarely within the purview of a public servant's responsibilities. Even if it is assumed that the complaint was exaggerated or ultimately found untrue, it does not follow that the act was wholly unconnected with his official functions. At the very least, it must be regarded as an act 'purporting to be in the discharge of official duty', thereby attracting the bar under Section 197 of the CrPC.

19. The protection to police officers under Section 140 of the Delhi Police Act, 1978 also fortifies this conclusion. The provision clearly mandates that no prosecution shall be entertained against a police officer for any act done in the discharge or purported discharge of official duty, unless instituted within three months or with prior sanction of the competent authority. In the present case, the complaint was filed nearly twelve years after the incident, and there is no sanction on record. Hence, both Section 197 CrPC and Section 140 of the Delhi Police Act operate as a bar to the prosecution.

20. Even leaving aside the requirement of prior sanction, the complaint as filed fails to disclose any credible *prima facie* case that would justify invoking the jurisdiction under Section 156(3) of the CrPC or proceeding under Section 200 of the CrPC.



21. Mere acquittal in a criminal case does not automatically lead to the conclusion that the initial complaint was false or malicious. Petitioner was acquitted since the allegation could not be proved beyond reasonable doubt. The Trial Court did not reach a conclusion that the prosecution was malicious. The standard of proof for establishing offences under Sections 182/193/211 of the IPC is materially different. It requires a direct finding or independent evidence to the effect that the complaint was knowingly false and made with intent to injure.

22. The petitioner has not brought on record any material to suggest that the allegations made by Respondent No.2 in FIR No. 426/2010 were demonstrably false at the time they were made. Nor is there any adjudication to that effect by a competent Court. The learned Magistrate who tried the original case may have acquitted the petitioner and his family, but that judgment does not record any finding that the complaint was false or motivated.

23. As regards the invocation of the offence under SC/ST Act, the petitioner's complaint refers vaguely to caste-based abuses but fails to provide any independent corroboration or witness support. The FIR registered in 2010 also does not make any reference to such allegations. The belated assertion made twelve years after the incident, and after acquittal in a different case, lacks sufficient probative value to proceed further.

24. There is, in sum, a complete absence of substantive evidence to suggest that Respondent No.2 had acted with intent to falsely



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implicate the petitioner or to cause wrongful loss or injury. The learned ASJ has rightly examined the materials on record and found them to be insufficient for issuing directions under Section 156(3) of the CrPC or taking cognizance under Section 200 of the CrPC.

25. In view of the foregoing discussion, this Court finds no infirmity or illegality in the impugned order. The present petition is dismissed.

**AMIT MAHAJAN, J**

**MAY 7, 2025**