

**SANJU PANDA, J.**

CRL.REV.NO.208 OF 1996 (Decided on 28.09.2010)

**BIMAL CHARAN PAL**

..... Petitioner.

.Vrs.

**YOGESH MUDGAL & ANR.**

..... Opp.Parties.

**CRIMINAL PROCEDURE CODE, 1973 (Act No. 2 of 1974) - SEC.197.**

For Petitioner - M/s.D.P.Dhal & A.K.Acharya.

For Opp.parties – M/s. Sauriyakanta Padhi, Miss.D.Mohapatra,  
Sandeep Parida & B.K.Sahoo.(for O.P.No1)  
Additional Standing Counsel(for O.P.No.2)

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**SANJU PANDA, J.** The petitioner who is the complainant has filed this revision against the order dated 24.2.1996 passed by the learned Sessions Judge, Balasore-Bhadrak, Balasore in Criminal Revision No.78 of 1994 setting aside the order dated 6.10.1994 passed by the learned S.D.J.M., Balasore in ICC Case No.180 of 1994 taking cognizance against the present opposite party no.1-accused.

2. It appears from the record that the son of the complainant-complaint was involved in a criminal case. During investigation of the said criminal case, the present opposite party no.1 who was a Police Officer posted at Baliapal Police Station called the complainant to the police station and assaulted him. Being aggrieved by the said action of the said opposite party no.1, the petitioner filed ICC Case No.180 of 1994 before the learned S.D.J.M., Balasore. Learned S.D.J.M. recorded the initial statement of the complainant and also another witness examined by the complainant who corroborated the statement of the complainant and considering the same, he took cognizance of offence under Section 323, IPC on 6.10.1994 against opposite party no.1 and issued summon to the accused. The accused challenged the said order before the learned Sessions Judge, Balasore in Criminal Revision No.78 of 1974. The Sessions Court held that the offence alleged to have been committed by the police officer had close nexus with the due discharge of his official duties and without prior sanction as provided under Section 197, Cr.P.C, the cognizance taken by the learned Magistrate was not sustainable. Accordingly, the learned Sessions Judge set aside the cognizance of offence taken by the learned S.D.J.M.

3. Learned counsel for the petitioner submitted that opposite party no.1 committed the offence which was not within the limitation of due discharge of his official duties. The learned S.D.J.M. after taking into consideration the statement of the complainant which was corroborated by another witness examined by him, took cognizance of offence and issued summon to the accused as he was satisfied that the act of the accused was not in due discharge of his official duties. Hence sanction under Section 197, Cr.P.C. was not necessary. Therefore, the order passed by the learned Sessions Judge is liable to be set aside.

4. Mr. S.K. Padhi, learned Senior Counsel appearing for the opposite party no.1 submitted that the Sessions Judge rightly held that opposite party no.1 in due discharge of his official duties committed the alleged offence as complained by the complainant. Therefore, the sanction under Section 197, Cr.P.C. is a must failing which the

proceeding will be vitiated. He further submitted that the said act of the said opposite party no.1 may be treated as in excess of his official duties but it cannot be assumed that the same was unrelated to the official duties. In support of his contention, he cited the decisions reported in **(2004) 8 SCC 40 (State of Orissa through Kumar Raghvendra Singh and others v. Ganesh Chandra Jew)** and **(2001) 5 SCC 7 (Rizwan Ahmed Javed Shaikh and others v. Jammal Patel and others)**.

5. The apex Court in the case of State of Orissa (supra) has held that protection under Section 197, Cr.P.C. 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. Therefore, test to determine the reasonable connection between the act complained of and the official duty is to be tested. Even if the public servant acted in excess of his official duty, if there exists the said reasonable connection, the excess will not deprive him of the protection.

6. In the present case, it appears that opposite party no.1, who is an IPS officer, was on the date of occurrence attached to the Baliapal Police Station as Additional Officer-in-charge during his training period. He called the petitioner to the police station on the ground that a murder case was investigated against his son. Therefore, it cannot be assumed that there was no connection between the due discharge of official duty of opposite party no.1 and the act alleged by the petitioner. As there was a connection between the alleged act done by the public servant in connection with due discharge of his official duty, the provision under Section 197 Cr.P.C. is attracted. The court cannot take cognizance of complaint against the public servant-said opposite party no.1 in respect of the offence alleged to have been committed in discharge of his official duty unless sanction is obtained from the appropriate authority.

7. Therefore, rightly the learned Sessions Judge set aside the order passed by the learned S.D.J.M., Balasore in I.C.C. Case No.180 of 1994 taking cognizance against the present opposite party no.1 and this Court is not inclined to interfere with the same.

Accordingly, the criminal revision is dismissed.

Revision dismissed.