

**INDRAJIT MAHANTY, J.**

CRLMC. NOS.1689 & 1690 OF 2006 (Decided on 28.06.2011)

**SANKARSANA BEHERA**

.....Petitioner.

.Vrs.

**STATE OF ORISSA**

.....Opp.Party.

**CRIMINAL PROCEDURE CODE, 1973 (ACT NO.2 OF 1974) – S.197.**

For Petitioner - M/s. Laxman Pradhan, A.Pradhan,  
D.Pr.Das & N.Hota.  
For Opp.Party - Mr. S.Kanungo  
(Addl.Standing Counsel)

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**I.MAHANTY, J.** Both the applications have been filed by the petitioner-Sankarsana Behra with a prayer to quash the orders dated 28.3.2006 in 2(b)C.C. Nos.3 & 4 of 2006, by which orders the learned S.D.J.M., Gunupur has been pleased to take cognizance against the petitioner for the offences under Sections 21 of O.T.T. Rule, 1980 and 27(3) (a) of O.F.A, 1972.

**2.** Learned counsel for the petitioner submitted that while the petitioner was working as “Block Development Officer” at Gudari Block in the district of Rayagada on 12.9.2005 as well as on 14.9.2005, the campus of the Panchayat Samiti, Gudari was searched by the Forest Range Officer, Gudari Range and found Sal poles, 3<sup>rd</sup> Class Misc. Poles and small Salia bamboo pieces at the Panchayat Samiti campus after they had been used as construction materials of the block building under the supervision of the Junior Engineer of the Block.

**3.** It is further stated that the offence reports dated 12.9.2005 (CRLMC No.1690 of 2006) and 14.9.2005 (CRLMC No.1689 of 2006) under Annexure-2 series, were filed and registered as 2(b)CC Case Nos. 3 and 4 of 2006 in the court of the learned S.D.J.M., Gunupur impleading the present petitioner as the sole opposite party, who was then working as B.D.O. for the alleged offence under Sections 21 of OTT Rule, 1980 and under Section 27(3)(a) of O.F.A, 1972.

**4.** The petitioner has challenged the orders of cognizance dated 28.3.2006, inter alia, on the ground that the said order suffers from the infirmity of want of sanction as contemplated under Section 197 Cr.P.C. The construction that was carried out for that of the block office buildings and that too, by the Junior Engineer attached to the block and clearly the allegation relates to acts in due discharge of official duty, therefore, learned counsel for the petitioner prays that the prosecution case may be quashed for want of sanction.

5. Learned counsel for the petitioner placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **Anjani Kumar v. State of Bihar and another**, AIR 2008 SC 1992, wherein the Hon'ble Supreme Court came to hold that once it is established that 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. It is further observed that if it is prima facie, found that the act or omission for which the accused was charged which has a reasonable connection with the discharge of his duty then it must be held to be official, to which applicability of Section 197 Cr.P.C. cannot be dispute.

Reliance was also placed on the judgment of this Court in the case of **Sri Debasis Panigrahi v. State of Orissa and another**, 2009 (II) OLR-504, wherein the Division Bench of this Court while discussing with the scope of Section 482 Cr.P.C., came to hold in the said case that the learned Magistrate in course of passing the order of cognizance has acted in a most casual and mechanical manner and has failed to apply his judicial mind to the very nature and extent of the allegations made in the complaint and issued process against the petitioners therein.

In this respect, Section 197 Cr.P.C. was taken into consideration and the Division Bench of this Court came to hold that allowing the petitioner to invoke Section 197 Cr.P.C., it must be shown that the accused had committed the alleged act while acting or purporting to act in the discharge of his official duties. Such act must fall within the scope and range of the official duties of the public servant and after it is found that the said act comes within the official duty of such public servant, protection of Section 197 Cr.P.C. is available and not otherwise.

6. Learned Additional Standing Counsel for the State submitted that he has received instructions from the office of the Divisional Forest Officer, Rayagada Division vide letter dated 19.5.2007 in which it is stated that no sanction order has been obtained under Section 197 Cr.P.C. to initiate criminal proceeding against the petitioner-Sankarsan Behera.

7. After hearing the learned counsel for both the parties and on perusing the impugned orders of cognizance dated 28.3.2006 in both the cases, it is clear therefrom that while the orders of cognizance have been passed, there is no whisper of any finding as to the applicability or otherwise of Section 197 Cr.P.C.

8. In the facts of the present case, it is clear that the petitioner was working as Block Development Officer and the construction work of the building or extension thereto, has been assigned to the Junior Engineer to carry out the work departmentally. It is in the process of such assignment, it is alleged that certain forest produce (wooden poles) were used for construction of block office. Hence, it would be suffice to note that the alleged act against the accused-petitioner was clearly an act which the accused-petitioner allegedly committed in due discharge of his official duties and, therefore, sanction under Section 197 Cr.P.C. is mandatory prior to passing of order of cognizance.

9. In view of the aforesaid facts and the case laws cited hereinabove, I am of the considered view that in the absence of sanction under Section 197 Cr.P.C., the

orders dated 28.3.2006 passed by the learned S.D.J.M., Gunupur in 2(b)CC Nos.3 & 4 of 2006 taking cognizance against the petitioner for the offence under Sections 21 of OTT Rule, 1980 and 27(3)(a) of O.F.A, 1972 is wholly without any authority of law and hence, it is directed to be quashed. The L.C.R. be returned immediately.

**10.** The CRLMC is allowed accordingly.

Application allowed.