

GAHC010276942023



2026:GAU-AS:2779

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1300/2023

ANGSHU RAJKUMAR
S/O LATE BHAGYACHANDRA RAJKUMAR,
R/O VILL- ALGAPUR, P.O. RAJNAGAR, P.S. SILCHAR,
IN THE DISTRICT OF CACHAR, ASSAM, PIN-788026

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:MD. RIYAJ UDDIN
S/O ABDUL MUKTADIR
R/O P.O
VILL AND P.S. BAZARICHEERA
IN THE DISTRICT OF KARIMGANJ
ASSA

Advocate for the Petitioner : M K BORAH, MS. P. KASHYAP

Advocate for the Respondent : PP, ASSAM, MR. A AHMED (R-2),MR. U U KHAN (R-2),MR. A AHMED (R-2)

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

Date : 24.02.2026

Heard Mr. M. K. Borah, learned counsel for the petitioner. Also heard Mr. A. Ahmed, learned counsel for the respondent No.2 and Ms. A. Begum, learned

Addl. P.P. for the State.

2. By this application filed under Section 482 of the Cr.P.C, 1973 the petitioner has prayed for quashing of the C.R. case being C.R Case No. 465/2016 pending before the Court of learned Additional Chief Judicial Magistrate, Karimganj under Sections 147/148/149/341/354/109/325/307/379/326/500 of IPC and the subsequent proceedings qua the petitioner, namely, Shri Angshu Rajkumar.

3. The case commence with the filing of the complainant case against 18 nos. of accused persons by the complainant stating *inter-alia* that his son who was working with the Indian Army came to his house on leave and while staying in his house had a tussle with other accused persons and that on 20.06.2016 his son was attacked by the other accused persons in front of the Mukherjee L.P. School. The accused persons had come there by riding bike and vehicles and started assaulting the victim. The informant further stated that the officer-in-charge of Bazaricheera police station along with a constable reached the place of occurrence on being informed and upon reaching the same, it is alleged in the said complaint that the petitioner and the other constable told the other accused person to assault the victim. The complainant further states that the petitioner had taken the victim and others to the police station where the petitioner had assaulted the victim with lathi.

4. On receipt of the said complaint, on examination of one witness the Addl. CJM, Karimganj ordered for further enquiry and on further enquiry being made i.e. after examination of four witnesses a prima facie case was made out and cognizance was taken by the said Court on 19.07.2016 against the petitioner and other accused persons. Thereafter, trial started and till date three prosecution witnesses were examined.

5. Mr. Borah, learned counsel for the petitioner submits that the proceedings were initiated against the petitioner and cognizance was taken without the prosecution sanction as provided under Section 197 of the Cr.P.C. He submits that the petitioner had reached the place of occurrence to take care of the situation where a mob had attacked the victim and brought the victim to the police station and on few allegations made against the petitioner by the complainant cognizance is taken for offence under various Section of law without the prosecution sanction being accorded to prosecute the petitioner by the competent authority. He further submits that under Section 197 of the Cr.P.C, it is provided that no Court shall take cognizance of offence except with a previous sanction given by the competent authority in cases where the public servant as acted or has purported to act in discharge of his official duty. In view of the said provision the learned counsel for the petitioner has prayed for the quashing of the instant proceeding. On the other hand, Mr. Ahmed, learned counsel for the respondent No.2 has pointed out the allegation against the petitioner in the complaint petition, wherein it is clearly stated the petitioner on reaching the place of occurrence had ordered the other accused persons who were present there to assault the victim and that he too had assaulted the victim at the place of occurrence that is in front of the L.P. School. He has also placed the averment made in the complaint petition by the informant that after taking the victim to the police station, the petitioner had assaulted the victim again.

6. The learned counsel had thereafter placed the deposition of PW1, who had also stated that the petitioner had asked other accused persons to assault the victim and that the petitioner had also assaulted victim in the police station compound with lathi. As such, he submits that the same cannot be considered

to be in discharge or in purported exercise of discharge of official duty as required under Section 197 of the Cr.P.C. Accordingly he prays that no quashing of the instant proceeding be allowed in the facts of the present case.

7. The main contention of the learned counsel appearing for the petitioner is that prosecution sanction was not taken before taking cognizance of the offence against the petitioner. In this connection, this Court would like to quote Section 197 here 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 [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 expression apply as if for the expression "State Government" "Central Government" were substituted.]

²*[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 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, [section 376A, section 376AB, section 376C, section 376D, 1860).] section 376DA, section 376DB] 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.

⁴[(3A) 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.]

⁴[(3B) 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."

8. The hon'ble Apex Court in the various decisions right from ***Matajog Dobey Vs. H.C. Bihari*** reported in ***AIR 1956 SC 44*** wherein the hon'ble Constitution Bench of the Apex Court has deliberated on the various facts which require obtaining of sanction before cognizance. In the said case the security personnel of the building were assaulted by the Income Tax Official but considering the fact that the office premise has to be searched as soon as possible the sanction was said to be a mandatory requirement in the said case. Thereafter, not to speak of the various other decisions the hon'ble Apex Court in ***Sankaran Moitra vs. Sadhna Das*** reported in ***(2006) 4 SCC 584*** had held in the facts of the said case i.e. the police has beaten up the husband of the complainant who was distributing foods in pooling boots and disturbances took place had held that sanction may be at any stage of the prosecution and if the complaint does not disclosed that the said action was in discharge of official duty then the said question of sanction may be considered later. After giving the finding, the Apex Court had concluded that sanction would be required in the facts of the said case. The hon'ble Apex Court had also held in various decisions that in doing the official duty if the public servant does excess in the duty but there is a reasonable connection between act and performance of duty, the excess action will not be ground to deprive of sanction. The said law point was held ***in State of Orissa Through Kumar Raghvendra Singh and Anr Vs. Ganesh Chandra Jew*** reported in ***(2004) 8 SCC 40***. So in order to see whether the sanction was required or not the true test as enunciated by the hon'ble Supreme Court is the reasonable connection between the act and the performance of duty which can also include some excess in the said duty.

However in the instant case it is seen that the police personnel i.e. petitioner had reached the place of occurrence and had ordered the mob to assault the victim and that after he took the victim to the police station the petitioner had again assaulted the victim.

9. The petitioner being the police personnel should have taken care of the situation where the mob attacked the victim and should have safely taken the victim to the police station and should have saved him from the mob but according to the complaint the petitioner had himself assaulted victim both of the place of occurrence as well as in the police station. The said fact has been substantiated by complainant when he examined himself as PW1 before the Court of learned Additional CJM, Karimganj. As such this Court in view of the said facts does not find it fit to interfere with the cognizance order dated 09.07.2016 taken against the present petitioner namely, Angshu Rajkumar.

10. As such the petition is dismissed and disposed of.

11. However, it is open for the learned trial Court to deliberate on the issue of prosecution sanction at any stage of the evidence.

12. Interim order stands vacated.

JUDGE

Comparing Assistant