

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.1209 of 2023

Ashok Mandal, aged about 32 years, son of Kalu Mandal, resident of Village Haroraidih, P.O. & P.S. Masalia, District Dumka.

... Petitioner

Versus

1. The State of Jharkhand
2. Ishwar Dayal Munda, S/o Not Known, Officer-in-Charge, Masalia
3. Ram Prasad Paswan, S/o Not Known, A.S.I., Masalia
4. Manoj Karmali, S/o Not Known, Police posted at Masalia P.S.
No.2 to 4 all are resident of Village Masalia, Thana Campus, P.O. & P.S. Masalia, District Dumka.
5. Goutam Mandal, Son of Manohar Mandal, Resident of Village Kathalia, P.O. & P.S. Masalia, District Dumka.

... Opposite Parties

For the Petitioner	: Mr. Ashish Kumar Thakur, Advocate Ms. Kabisha Goenka, Advocate Mr. Ranjit Kumar, Advocate
For the State	: Mrs. Priya Shrestha, Spl.P.P.
For the Opp. Parties	: Mr. Jagat Kumar Soni, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with the prayer to quash the order dated 02.03.2023 passed by the learned Sessions Judge, Dumka in Criminal Revision No.09 of 2022 whereby and where under, the learned Sessions Judge, Dumka

affirmed the order dated 30.07.2022 passed by the learned Judicial Magistrate-1st Class, Dumka in Complaint (PCR) Case No.276 of 2021 whereby and where under the learned Magistrate dismissed the complaint.

3. The petitioner herein is the complainant of Complaint (PCR) Case No.276 of 2021 which was filed contending therein that the petitioner-complainant beat his wife with a bamboo consequent upon quarrel between them. The wife of the petitioner-complainant intimated about the occurrence to her father over phone. Her father came and along with the wife of the petitioner-complainant went to Masalia Police Station. Police summoned the complainant to the police station and made him sit under a litchi tree inside the campus of the police station and beat him. In support of his case, the complainant examined himself under solemn affirmation and also examined four other inquiry witnesses including one doctor.

4. The learned Judicial Magistrate-1st Class, Dumka considered that though the complainant explained the delay of four days in filing the complaint by mentioning therein that he reported matter in writing to the S.P., D.I.G. and I.G. Dumka before filing the complaint but the complainant could not produce any document in support of such contention. The learned Judicial Magistrate-1st Class, Dumka, further considered that it is the admitted case of the complainant that he had a fight with his wife and he had physically assaulted his wife. Upon the report submitted by the wife of the complainant, the complainant was

brought to the police station. The learned Judicial Magistrate-1st Class, Dumka considered that public servants have been treated as a special category in order to protect them from malicious and vexatious prosecution and the action of the proposed accused persons of the case being all police officers on duty at the Masalia Police Station; has a reasonable connection with the discharge of their official duties and as per legal mandate, sanction for prosecution as envisaged under Section 197 of the Code of Criminal Procedure is a *sine qua non* for taking cognizance against the proposed accused persons of the complaint Case but in the absence of the sanction for prosecution, did not find it proper to take cognizance of any offence and dismissed the complaint.

5. On being aggrieved by the order passed by the learned Judicial Magistrate-1st Class, Dumka, the petitioner filed Criminal Revision No.09 of 2022 in the court of learned Sessions Judge, Dumka. The learned Sessions Judge, Dumka concurred with the observations made by the learned Judicial Magistrate for dismissing the complaint and dismissed the criminal revision.

6. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in the case of **Head Constable Raj Kumar Etc. Vs. The State of Punjab & Another** reported in 2025 LiveLaw (SC) 684 and submits that therein in the facts of that case where the petitioners surrounded a civilian vehicle in plain clothes and jointly fired upon its occupant, such conduct, by its very nature, bore no reasonable nexus to the duties of the maintaining of the public order or

effecting lawful arrest; and submits that in this case also there was no reasonable nexus between the act of the proposed accused persons of the case in assaulting the petitioner in their official duty, hence both the courts below had erred in holding that the sanction of prosecution under Section 197 of the Code of Criminal Procedure is required in this case. Hence, it is submitted that the prayer, as prayed for in the instant Cr.M.P., be allowed.

7. Learned Spl.P.P. appearing for the State and learned counsel for the opposite parties vehemently oppose the prayer and submit that it is the mandate of the Hon'ble Supreme Court of India that in the cases related to matrimonial disputes, police has to first try to find out whether there is possibilities of any settlement between the spouses and in case there is any chance of settlement, then to explore the possibilities of settlement; rather than to hurriedly register the First Information Report. It is next submitted by the learned Spl.P.P. appearing for the State and learned counsel for the opposite parties that it is the admitted case of the petitioner that the petitioner was summoned to the police station by the proposed accused person only after the petitioner assaulted his wife with a bamboo on her back causing injuries and at which his wife called her father and both of them went to the Masalia Police Station. It is next submitted that it is also the admitted case of the complainant, that after the alleged occurrence both the wife of the petitioner and the petitioner went to the house of the petitioner and led conjugal life and there is no averment

anywhere in the petition that they are not leading a happy conjugal life till today. It is also submitted that under such circumstances, it cannot be said that the alleged occurrence has no nexus with the discharge of official duty of the accused persons. Hence, it is submitted that this Cr.M.P. is without being merit and be dismissed.

8. Having heard the rival submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that it is the admitted case of the petitioner-complainant that first he beat up his wife with bamboo and thereafter his wife called her father and wife of the petitioner and her father went to the Masalia Police Station, complained about the acts of the petitioner being the husband. Obviously, it is the mandate of the Hon'ble Supreme Court of India that in criminal cases relating to matrimonial dispute police should not rush to lodge the F.I.R and explore the possibilities of settlement. It is the admitted case of the petitioner-complainant that with the intervention of the police, there was a settlement between the petitioner and his wife and from the police station itself, both the petitioner and his wife went to the house of the petitioner to lead conjugal life. There is nothing in the record of this case to suggest that they are not leading happy conjugal life. The undisputed fact remains that the wife of the petitioner and her father were all along present in the police station while the complainant was allegedly assaulted under a litchi tree inside the campus of the police station but the petitioner-complainant has not examined his wife or his father-in-law, as an inquiry witness though the

undisputed fact remains that consequent upon the settlement in the police station, the petitioner and his wife went to the house of the petitioner to resume conjugal life.

9. It is a settled principle of law as has been held by the Hon'ble Supreme Court in the case of **Devinder Singh & Another vs. State of Punjab through CBI** reported in (2016) 12 SCC 87 paragraph-39 to 39.9 of which reads as under:-

"39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.

39.5. In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of court at a later stage, finding to that effect is permissible and such

a plea can be taken first time before the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed.

39.7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.

39.9. In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial." (Emphasis supplied)

wherein it has been held by the Hon'ble Supreme Court of India that the protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty and once act or omission has been found to have been committed by public servant in discharging his duty; it must be given liberal and wide construction so far its official nature is concerned and even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection, it will not deprive him of protection under Section 197 CrPC.

10. Now, coming to the facts of the case; the undisputed fact remains that the proposed accused persons of the case summoned the petitioner in discharge of their official duty. The undisputed fact remains that

there was matrimonial dispute between the parties, which has been settled with the intervention of the police. It is the admitted case of the petitioner that the petitioner beat up his wife with a bamboo and with the intervention of the police, the wife of the petitioner and the petitioner went together to the house of the petitioner to resume conjugal life. There is no material to suggest that the conjugal relationship of the petitioner and his wife is not going on till today.

11. Under such circumstances, this Court has no hesitation in holding that neither the learned Judicial Magistrate nor the learned Sessions Judge, Dumka has committed any illegality in holding that this is a case where there is a reasonable nexus between the acts of the proposed accused person and discharge of his official duties. Hence, sanction for prosecution is essential for prosecution of the proposed accused persons of the complaint Case and in the absence of the same, the complaint has rightly been dismissed.

12. It is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **D. Devaraja vs. Owais Sabeer Hussain** passed in **Criminal Appeal No.458 of 2020** arising out of **SLP (Crl.) No.1882 of 2018** dated 18.06.2020, wherein the Hon'ble Supreme Court of India considering the facts of that case has observed that, in that case, the High Court after having held that the sanction was a legal requirement which empowers the Court to take Cognizance, therefore, the High Court ought to have exercised its power to quash the complaint.

13. Under such circumstances, this Court do not find any illegality in the impugned order dated 02.03.2023 passed by the learned Sessions Judge, Dumka in Criminal Revision No.09 of 2022, whereby and where under, the learned Sessions Judge, Dumka affirmed the order dated 30.07.2022 passed by the learned Judicial Magistrate-1st Class, Dumka in Complaint (PCR) Case No.276 of 2021 whereby and where under the learned Magistrate dismissed the complaint.

14. Accordingly, this Criminal Miscellaneous Petition, being without any merit, is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 27th January, 2026
AFR/ Madhav
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