

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Appeal No. 382/2023

Prakash Dudi S/o Sh. Aasharam Dudi, Aged About 39 Years, Rid,
P.s. Peelwa, Dist. Nagour, Rajasthan At Present Executive Officer,
Municipal Corporation- Pindwara, Rajasthan

----Appellant

Versus

1. State Of Rajasthan, Through Pp
2. Kaluram S/o Karmaji, Aged About 63 Years, B/c Sargada,
R/o Indra Colony, Pindwara, Teh. Pindwara, Dist. Sirohi,
Rajasthan.

----Respondents

For Appellant(s) : Mr. Naman Mohnot

For Respondent(s) : Mr. Gaurav Singh, P.P.

HON'BLE MR. JUSTICE FARJAND ALI

Order

25/04/2023

1. Issue notice. Learned Public Prosecutor has accepted notice on behalf of the respondent No.1. He did not opt to file reply to the application under Section 5 of the Limitation Act. Thus, notice be issued to the respondent No.2 only. Rule is made returnable on 23.05.2023.

2. Learned counsel for the appellant implores the court for interim relief as the proceedings before the trial court are going on and the process has been issued for his presence.

3. Heard on the interim relief.

4. The petitioner happens to be a public servant and as per the averments made in the petition, on the date of incident, he alongwith the entire team of officers of the Municipal Board,

Pindwara proceeded to the spot for removal of the encroachment in accordance with the procedure established by law and as such, he was discharging his official duty at the relevant point of time, therefore, before taking cognizance, a sanction under Section 197 of the CrPC was required to be obtained, but the same has not been done in this case. It is further contended that after thorough investigation, a negative final report came to be submitted, in which, upon making protest by the complainant, the learned trial court took cognizance of the offence and issued process. It is also contended that the grounds, on which the Investigating Officer reached on the conclusion of falsity of allegations, have not been considered by the trial court before taking cognizance of the offence, which was otherwise imperative upon it before proceeding further in the matter.

5. In this view of the matter, it is directed that till the next date of hearing, further proceedings in connection with the FIR No.219/2018 (FR No.117/2018) of Police Station Pindwara shall remain stayed.

6. List on 23.05.2023.

(FARJAND ALI),J