agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts."

9. In the light of discussion in the foregoing paragraphs, we are of the opinion that further continuation of the investigation as against applicant nos.4 to 8 will be exercise in futility and abuse of process of law. Therefore, the FIR to the extent of applicant nos.4 to 8 stands quashed and set aside.

10. As already observed, as against applicant nos.1 to 3 there are specific allegations and also dates are mentioned, therefore, the FIR needs further investigation qua applicant nos.1 to 3.

11. Rule is made absolute partly.

Criminal Application is disposed of accordingly.

Result:- Application allowed.

ABC 2016 (II) 531 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(V.K. Jadhav, J.)

Criminal Application No. 3093 of 2015

Decided on 27 September, 2016

Aurangabad Bench

SANTOSH UTTAMRAO GOMSALE ***- Applicant(s).***

Versus

STATE OF MAHARASHTRA & ANR. ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Sections 323 & 324 —Code of Criminal Procedure, 1973 — Section 197&204 — Previous sanction & Issuance of process — Police excess in connection with effecting the arrest —Allegation of — Admitted fact — complainant caused injury to the applicant-accused by dangerous weapon while evading arrest — no evidence regarding beating within the premises of police station & inside the police station —— Held, the applicant was discharging his duty at the material time— conduct as alleged against the applicant is reasonably connected with the performance of his official duty — certainly entitled for the protection u/s 197 Cr.P.C.— Cognizance could not have been taken***

without previous sanction of the competent authority — Application allowed. (Para 14)

(B) Code of Criminal Procedure, 1973 — Section 197 — Previous sanction — Limitations of — Held, the protection is available only when the alleged act of the public servant is reasonably connected with the discharge of his official duty — the protection is not merely a cloak for doing the objectionable act. (Para 13)

(C) Interpretation of Statute — Procedural law — Code of Criminal Procedure, 1973 — Section 197 — Protection under — Object of — The protection is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants—State of Orissa Through Kumar Raghvendra Singh and others vs. Ganesh Chandra Jew —referred. (Para 12)

(D) Interpretation of Statute — Previous sanction for prosecution — Intention of legislation — The policy of the legislature is to afford adequate protection to public servants — to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause —State of Orissa Through Kumar Raghvendra Singh and others vs. Ganesh Chandra Jew —referred. (Para 12)

(E) Interpretation of Statute — Procedural law — Code of Criminal Procedure, 1973 — Section 197 — Protection under — Qualification of — it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties — It is not the duty which requires examination so much as the act — The act must fall within the scope and range of the official duties of the public servant concerned — It is the quality of the act which is important —State of Orissa Through Kumar Raghvendra Singh and others vs. Ganesh Chandra Jew —referred. (Para 12)

Facts:- *The applicant was working as police constable. Respondent No.2 came to be arrested in connection with an offence and after his arrest, he was produced before the J.M.F.C. Court. Respondent No.2 filed a complaint before the Magistrate about ill-treatment and beating at the hands of the applicant. He stated that he was mercilessly beaten by the applicant and other police personnel with the help of belt, wooden log and stick. Even he had shown the injury marks on his lip, face and shoulder to the Magistrate. After an enquiry ordered by the Principal District and Sessions*

Judge cognizance was taken and process was issued against the present applicant for the offences punishable under Sections 323 and 324 of I.P.C. The applicant preferred criminal revision before the Additional Sessions Court which was dismissed. Hence, the present writ petition.

It was observed by the honourable High Court that the applicant was discharging his duty at the material time and the respondent No.2 had caused injuries to the applicant by using the dangerous weapon. It was held that the applicant is certainly entitled for the protection as provided under Section 197 of Cr.P.C. The application was allowed.

Law of relief:- If the conduct of the public servant is reasonably connected with the performance of his official duty he is certainly entitled for the protection u/s 197 Cr.P.C.

Held:- The Supreme court while examining the issue of "police excess" during investigation and requirement of sanction for prosecution in this regard also referred the case of State of Orissa Through Kumar Raghvendra Singh and others vs. Ganesh Chandra Jewand quoted para 7 of the said case. Said para 7 reads as under:-

"7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and 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. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the

discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty..."(Emphasis supplied) (Para 12)

It has observed that the protection given under Section 197 of the Code has certain limitations and is available only when the alleged act of the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. It has also observed that, if in doing his official duty, he acted in excess of his duty but there is reasonable connection between the act and performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. (Para 13)

In the instant case, it is not disputed that the applicant was discharging his duty at the material time and the respondent No.2 had caused injuries to the applicant by using the dangerous weapon like fighter while evading his arrest. In absence of any evidence, about the beating extended to respondent No.2 within the premises of police station and inside the police station, the applicant is certainly entitled for the protection as provided under Section 197 of Cr.P.C. In the instant case, going by the factual matrix it is quite evident that the allegations have been made in respect of police excess in connection with effecting the arrest of respondent No.2 in crime registered against him. No doubt, the conduct as alleged against the applicant is reasonably connected with the performance of his official duty. The learned Magistrate could not have taken cognizance of the case without previous sanction of the competent authority. (Para 14)

Counsel:- ***For Applicant(s):*** *Mr. S. S. Thombre, advocate.*

For Respondent(s): *Ms. R.P. Gour, APP & Mr. S.S. Chapalgaonkar.*

November 2016

Cases Referred:-

1. *D.T. Virupakshappa Vs. C. Subash. (Para 4)*
2. *Omprakash and others vs. State of Jharkhand, through the Secretary, Department of Home, Ranchi 1 and another = ABC 2012 (II) 338 SC. (Para 10)*
3. *State of Orissa Through Kumar Raghvendra Singh and others vs. Ganesh Chandra Jew. (Para 12)*

JUDGMENT

V.K. JADHAV, J.: - 1. Rule. Rule made returnable forthwith. By consent heard, finally.

2. By way of this criminal application, the applicant is challenging the order passed below Exh.1 in Misc. Criminal Application No. 83 of 2012 passed by learned J.M.F.C. Kopargaon which is now registered as R.T.C. No. 121 of 2012 thereby issuing process against the applicant-accused for the offences punishable under Sections 323 and 324 of I.P.C. and the judgment and order dated 14.05.2015 passed by the Additional Sessions Judge, Kopargaon in Criminal Revision Application No. 22 of 2013, by which the order of issue process passed by the Magistrate, is confirmed.

3. Brief facts, giving rise to the present criminal application are as follows:-

a) The applicant is working as police constable posted at police station Kopargaon since 2011. Respondent No.2 came to be arrested in connection with Crime No. 65 of 2012 and after his arrest, he was produced before the J.M.F.C. Kopargaon. Respondent No.2 has filed complaint before the Magistrate about ill-treatment and beating at the hands of the applicant. The learned Magistrate has accordingly recorded the statement of respondent No.2 on 13.3.2012. Respondent No.2 has complained before the Magistrate that on 10.3.2012 at about 10.00 to 10.15 p.m. when he was returning to his house from Shivjayanti procession, he was caught hold by the present applicant, who was accompanied by 10 to 12 police personnel. He has further alleged that the applicant initially beaten him in Ganesh Chowk and thereafter took him to the police station. It has also alleged that even in the premises of police station and inside of police station, he was mercilessly beaten by the applicant and other police personnel accompanied by him with the help of belt, wooden log and stick. On 10.3.2012 at about 12 to 12.30 midnight, he was taken to the Government hospital and therefrom, he was shifted to private

hospital of Dr. Umbarkar. He was admitted in the hospital of Dr. Umbarkar till 12.30 noon on 13.3.2012. After his discharge, he was taken to the police station, Kopargaon and accordingly produced before the Court. Even he had shown the injury marks on his lip, face and shoulder to the Magistrate.

b) On 15.3.2012, the learned Magistrate has submitted a report regarding the complaint of ill-treatment made by respondent No.2 to the Principal District and Sessions Judge, Ahmednagar. The Magistrate was directed by the Principal District and Sessions Judge, Ahmednagar to conduct enquiry into the matter and prepare a report as per the directives given in criminal manual. The learned Principal District and Sessions Judge, Ahmednagar also directed him to take cognizance of offence, if any, or to forward the same to the Magistrate having jurisdiction to take cognizance of the same and submit compliance report to the District and Sessions Court at the earliest. The learned Magistrate has also recorded the statement of certain constables and medical officers, who have medically examined respondent No.2 and by impugned order dated 17.4.2012 below Exh.1 in Criminal Misc. No. 83 of 2012 issued process against the present applicant for the offences punishable under Sections 323 and 324 of I.P.C. Accordingly, the said criminal application also came to be disposed of and R.T.C. No. 121 of 2012 directed to be registered.

c) Being aggrieved by the same, the applicant has preferred criminal revision No. 22 of 2013 before the Additional Sessions Court, Kopargaon and the learned Additional Sessions Judge, Kopargaon by judgment and order dated 14.5.2015 dismissed the said criminal revision by confirming the order passed by the Magistrate. Hence, this writ petition.

4. Learned counsel for the applicant submits that learned Magistrate could not have taken cognizance of the alleged offence and issued process without sanction from the competent authority, as provided under Section 197 of Cr.P.C. During the course of enquiry, learned J.M.F.C. has recorded statement of police officer and other persons, who were on duty at the relevant time when respondent No.2 was arrested in crime No. 65 of 2012. The allegations have been made in the said crime i.e. crime No. 65 of 2012 that at about 9.30 p.m. on 10.3.2012 when the complainant journalist Joshi was viewing procession of Shivjayanti and other cultural activities, respondent No. 2 went there under the influence of liquor and beaten said journalist Joshi by giving a blow of fighter on the left side of his forehead.

Learned counsel for the applicant submits that in consequence of which, said journalist Joshi had sustained severe injury. It was revealed during the course of enquiry conducted by the Magistrate that, respondent No.2 started evading his arrest and he was actually chased by the applicant and other constables. For evading the arrest, respondent No.2 took out fighter from his pocket and inflicted the blows on lips, face and neck of the applicant with the help of said fighter. It was also revealed during the said enquiry that the applicant and police constables accompanied him constrained to use some force for effecting the arrest of respondent No.2.

Learned counsel submits that the applicant was on duty and he had sustained injuries on account of assault made by respondent No.2 for evading his arrest. The applicant had sustained serious injuries on his lips, face and neck since respondent No.2 used dangerous weapon like fighter while causing the said assault. Even if for the sake of discussion, it is assumed that the applicant has acted in excess of his duty, still there is reasonable connection between the act complained and the discharge of his official duty and therefore, the applicant is entitled for protection as provided under Section 197 of Cr.P.C.

Learned counsel submits that thus the order passed by the Magistrate issuing process against the applicant and the judgment and order passed by the Additional Sessions Judge, thereby confirming the order of Magistrate for issuance of process, are required to be quashed and set aside.

Learned counsel for the applicant, in order to substantiate his contentions, places reliance on the decision of the ***Supreme Court, in Criminal appeal No. 722 of 2015, delivered on 27.04.2015 (D.T. Virupakshappa Vs. C. Subash).***

5. Learned counsel for respondent No.2 submits that on 10.3.2012 in Ganesh Chowk itself, respondent No.2 was mercilessly beaten by the applicant and thereafter, respondent No.2 was taken in the police station. Thereafter, even in the premises of police station and inside of police station, respondent No.2 was beaten by the applicant with the help of belt, wooden log and stick. On 10.3.2012 itself, respondent No.2 was taken to the rural hospital, Kopargaon wherein after medical examination; external injuries have been noted down. It has observed by the Medical Officer that those injuries are simple in nature, except injury No.7 for which respondent No.2 was required to be examined by the Civil Hospital, Ahmednagar. Even on

13.3.2012, when respondent No.2 was examined again in the same Rural Hospital, Kopargaon as per the order passed by the court, same injuries were found on his person. During the course of enquiry, a statement of Dr. Krishna Fulsundar, attached to Rural Hospital, Kopargaon, came to be recorded by the Magistrate.

Learned counsel submits that thereafter instead of taking respondent No.2 to Civil Hospital, Ahmednagar, he was taken to private hospital of Dr. Umbarkar and after discharge, he was produced before the court on 13.3.2012. Even assuming that in Ganesh Chowk, initially the applicant and other police constables constrained to use some force when respondent No.2 evaded his arrest, however, respondent No.2 was thereafter taken to the police station, where he was mercilessly beaten in the premises of police station as well as inside of police station. Respondent No.2 has sustained near about 8 injuries in the form of contusions and abrasions. During the course of enquiry, the Magistrate has also recorded statement of Dr. Sanjay Umbarkar, private medical practitioner, who has also recorded injures after examining respondent No.2 and further stated that he found dislocation in the shoulder joint and treated the patient-respondent No.2 accordingly. The Magistrate has rightly issued process against the applicant accused. The applicant accused has committed offence for which no sanction under Section 197 of Cr.P.C. is required. Learned counsel submits that there is no merit in the application and the application is liable to be dismissed.

6. I have also heard the learned A.P.P. for the respondent No.1 - State.

7. On careful perusal of the record of enquiry conducted by the Magistrate, it appears that the learned Magistrate has recorded statement of Head Constables, constables and even Police Sub Inspector. The learned Magistrate has recorded statement of Medical Officer of Rural Hospital, Kopargaon and also the statement of Dr. Umbarkar, a private medical practitioner. I have also perused the papers of crime No. 66 of 2012. As per the allegations made in crime No. 66 of 2012, on 10.3.2012, respondent No.2 under the influence of liquor assaulted one journalist Joshi when he was viewing the procession of Shivjayanti and the cultural activities and inflicted injuries on the left side of his forehead with the help of weapon, fighter. The said weapon fighter allegedly used by the respondent

No.2, came to be seized during investigation of crime No. 66 of 2012 and on reading description of said weapon; it appears that the said weapon is really a dangerous weapon. As per the description, said weapon is of brass metal, 12 cm in length with 3 big holes for holding it and in the center of the fighter, there are 3 pointed angels.

8. On perusal of the statement of other police constables, who accompanied the applicant, I find that the respondent No.2 while evading his arrest, ran away and he was actually chased by the police. It also reveals from the statement of those constables that present applicant caught hold of respondent No.2 and at that time, respondent No.2 took out fighter from his pocket and inflicted the blows on face, lip and neck of the applicant with the help of said fighter. It also reveals from the statement of those police constables that even thereafter, it was difficult for 4/5 constables to control respondent No.2, who was under the influence of liquor. Learned counsel for the applicant, during the course of arguments, brought to my notice that the applicant was examined on the same day at about 10.15 p.m. at rural hospital, Kopargaon wherein injuries on his upper lip and anterior side of neck are recorded by the Medical Officer, with observation that the applicant has difficulty in breathing. Learned counsel has also brought to the notice of this Court that after due investigation, the police submitted another charge sheet against respondent No.2 in respect of assault made on the present applicant.

9. Except bare statement of respondent No.2, nothing was revealed during the course of inquiry that respondent No.2 was subjected to beating with the help of belt, wooden log and sticks, in the premises of the police station and even inside of the police station.

Furthermore, it transpired from enquiry papers that respondent No.2 has suppressed material facts about the actual incident. It further appears from the said crime No. 66 of 2012 that respondent No.2 had used dangerous weapon-fighter for inflicting injury on the forehead of journalist Joshi, who was silently viewing the procession of Shivjayanti and other cultural activities with his family members and respondent No.2 thereafter used the same fighter for inflicting injuries on the person of the applicant while evading his arrest.

10. In the case of D.T. Virupakshappa Vs. C. Subash, (supra) relied upon by learned counsel for the applicant, the Supreme Court in para 6 of the said order has referred the case of ***Omprakash and***

others vs. State of Jharkhand, through the Secretary, Department of Home, Ranchi 1 and another = ***ABC 2012 (II) 338 SC*** and quoted paragraphs 32 and 41 of the said judgment. Paras 32 and 41 read as under:-

> "32. The trust test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant Singh). The protection given under Section 197 of the Code has certain limits and 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. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection (Ganesh Chandra Jew). If he above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood. (Emphasis supplied)
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> 41. The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the Code. It is not possible for us to hold that in such a case, the court

cannot look into any documents produced by the accused or the public servant concerned at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea. ..."

11. In the said case, the question of sanction whether is necessary or not arise at the inception and there were unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of Cr.P.C. It has also observed in para 41 that it is not possible for the Court to hold that in such a case, the Court cannot look into any documents produced by the accused or the public servant concerned at the inception.

12. The Supreme court while examining the issue of "police excess" during investigation and requirement of sanction for prosecution in this regard also referred the case of State of Orissa Through Kumar Raghvendra Singh and others vs. Ganesh Chandra Jew and quoted para 7 of the said case. Said para 7 reads as under:-

"7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and 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. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the

nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty..." (Emphasis supplied)

13. It has observed that the protection given under Section 197 of the Code has certain limitations and is available only when the alleged act of the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. It has also observed that, if in doing his official duty, he acted in excess of his duty but there is reasonable connection between the act and performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection.

14. In the instant case, it is not disputed that the applicant was discharging his duty at the material time and the respondent No.2 had caused injuries to the applicant by using the dangerous weapon like fighter while evading his arrest. In absence of any evidence, about the beating extended to respondent No.2 within the premises of police station and inside the police station, the applicant is certainly entitled for the protection as provided under Section 197 of Cr.P.C. In the instant case, going by the factual matrix it is quite evident that the allegations have been made in respect of police excess in connection with effecting the arrest of respondent No.2 in crime registered against him. No doubt, the conduct as alleged against the applicant is reasonably connected with the performance of his official duty. The learned Magistrate could not have taken cognizance of the case without previous sanction of the competent authority.

15. In view of the above discussion, I proceed to pass the following order:-

a

ORDER

I. Criminal application is hereby allowed in terms of prayer clause "B".

b

II. Criminal application is accordingly disposed of. Rule is made absolute in the above terms.

***Result*:-** Application allowed.

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November 2016