ILR 2005 KAR 4191

MOHAN SHANTANA GOUDAR, J

Sudhir Kumar vs G. Lakshman

(A) CODE OF CRIMINAL PROCEDURE, 1973- SECTION 197- KARNATAKA POLICE ACT- SECTION 170 INDINAN ARMY ACT-SECTION 40-matter posted for recording defence evidence petitioner raises the question of prior sanction- application filed by petitioner rejected-Legality of same questioned-HELD-There is no hard and fast rule that the question of prior sanction should be considered after recording the evidence of both parties in every case. It is well settled that the question of sanction can be considered at the appropriate stage depending upon the facts and circumstances of that particular case. There cannot be any dispute that the question of sanction under Section 197 of the Code of Criminal Procedure can be raised at any time; may be immediatly after cognizance on framing of charges or even at the time of conclusion of the trial and after conviction as well. But, for claiming protection under Section 197 of Cr. p.c, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. For invoking protection under Section 197 of the code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty. But, if there is no reasonable connection between them and the performance of those duties, the official status furnishes only the occassion or opportunity for the acts, then no sanction would be required. The

* Criminal Petition No.1811/2004, Dated: 7th July 2005.

question as to whether the claim of accused that his act done during the performance of his official duty was reasonable one and neither pretended nor fanciful can be examined during the course of trial by giving opportunity to the defence to establish it.

(Paras 5,6)

HELD:

In the case on-hand, the evidence on behalf of the complainant is already recorded and the statement of the accused U/S. 313 of Cr. P.C., is also recorded. The matter is now posted for defence evidence. In this view of the matter, it would be beneficial for the trial Court to arrive at correct conclusion if the evidence on behalf of the accused is also recorded. Whether the alleged act of petitioner herein has occurred during the course of the discharge of his official duty or not is a purely a question of fact and the same has to be decided on the basis of the evidance on record.

(Para 5)

HELD:

In view of the aforesaid dictum laid down by the Apex Court, the question of prior sanction can even be decided by the Court either before trial, during the Course of trial or at the time of delivering the judgement on the basis of the evidence to be recored. As the defence-accused is yet to lead his evidence, it may be difficult for the trial Court to come to the correct conclusion on the question of prior sanction. Added to it, the criminal case is of the year 1985 and the same is pending adjudication since 20 years. It is not in dispute that the matter is now posted for recording of evidence of defence. Under such circumstances, it is not necessary for the trial Court to hear only on the point of sanction at this fag end of the trial, as the matter can be concluded once for all on all aspects of the case including

the question of prior sanction. The petitioner will have an opportunity to effectively deal with the said question at the time of leading his evidence as well as at the time of advancing final arguments on the merits of the case. The same would also enable the Trial Court to conclude the proceedings once for all expeditiously. This view of mine is supported by the observations made by the Apex Court in the Judgement cited supra. The Courts below have assigned certain valid reasons for coming to the conclusion, Thus under facts and circumstances of this case, the order of Trial Court directing the parties to submit their arguments both on the question of prior sanction as well as on merits of the matter at the time of final hearing' cannot be termed as erroneous or illegal. On reconsidering the material on record, I do not find any illegality in the orders passed by the Court below. Consequently, the criminal petition is liable to be rejected.

(Para 7)

Criminal petition dismissed.

Sri H. S. Chandramouli, S.P.P for petitioner
Sri. K. Shashikiran shetty and Sri. A.H. Bhagwan Advocates for Respondent.

CASES REFERRED: **AT PARAS**

1) *2001 SCC (Cri) 1234*
P.K. Pradhan v/s State of Sikkim *(foll)6, 7*

ORDER

Mohan Shantanagoudar, J

The application filed by the Petitioner U/S. 197 Cr. P.C. r/w Section-170 of the Karnataka Police Act and Section-40 of the Indian Arms Act before the trial Court is rejected. The said order is confirmed by the Sessions Court in Criminal Revision Petition No. 05/2003. Both these orders are assailed in this criminal revision petition.

2. Heard the learned S.P.P, appearing for the petitioner and Sri. A.H. Bhagwan learned Advocate appearing for the respondent and persued the records.

3. The records disclose that the petitioner herein who was working as Deputy Commissioner and District Magistrate, Bellary from 01-06-1984 to 13-02-1987 raided the premises of M/S. Dwaraka Arms Stores belonging to the respondent herein along with certain police officers on 12.10.1984 to 20.10.1984 and seized certain number of documents and articles. He lodged complaint on 18.10.1984 before the Superintendent of Police, Bellary and the same is registered against the firm i.e., M/S. Dwaraka Arms Stores (respondent herein) in crime No. 244/1984 for the offence punishable U/S. 25 of the Arms Act.

Thereafter, on 26.10.1984, the respondent herein lodged complaint U/S. 200 Cr. P.C, against the petitioner herein alleging offence punishable U/S. 500 of I.P.C. The averments made in the said complaint disclose that the petitioner herein, in the presence of other police personnel and the employees of complainant abused him and made certain defamatory imputations against the complainant - respondent herein, by telling that the respondent is not even worth

two paise. It is further alleged that the petitioner herein threatened the respondent that he would be arrested under the National Security Act and would be thrown out of Bellary district. Based on the said complaint and other materials, process came to be issued against the petitioner. The order of issuance of process was questioned before this Court in Crl. P. No. 881/1985 on the ground that the Trial Court should not have taken cognizance of the offence unless prior sanction from the appropriate authority is obtained by the complainant. This Court dismissed the criminal petition and the matter was taken to Apex Court in S.L.P No. 164/1988. The Apex Court dismissed the said S.L.P., on 14.04.1988 with the observation that "the question relating to previous sanction can be decided by the trial Court at appropriate stage."

Again, in the year 1990, the petitioner filed an application before the trial Court praying for deciding the question relating to the previous sanction before proceeding further with the matter. The said application was rejected by the order dated 11.07.1990 by the trial Court. Assailing the order of rejection, the petitioner preferred Criminal Revision Petition No. 44/1990 before the Session Court and the same came to be dismissed on 24.01.2002 with the observation that the question of prior sanction shall be considered on examination of the material evidence after recording the plea of the accused. Thereafter, evidence on behalf of the complainant was recorded. After completion of the evidence led on behalf of the complainant, the statement of the petitioner herein was recorded U/S. 313 of Cr. P.C. When the matter is posted for recording defence evidence, the present application U/S. 197 Cr. P.C, r/w Section-170 of Karnataka Police Act and U/S. 40 of the Arms Act came to be filed by the petitioner and the same is dismissed by the trial Court by its order dated 21.12.2002 by observing that both the parties may submit their arguments on the question of prior sanction at the time of final arguments of the criminal case. The said order is confirmed by the Session Court in Crl.R.P. No. 5/2003.

Both the orders of rejection of the application filed by the petitioner U/S. 197 of Cr.P.C., r/w 170 of Karnataka Police Act and U/S. 40 of Arms Act are called in question in this criminal petition.

4. Learned S.P.P., appearing on behalf of the petitioner vehemently submits that since the accused is a public servant and as he was discharging his official duty at the relevant point of time of the alleged incident and since there is a nexus between the incident and the act committed, the prior sanction is necessary; that the question of sanction shall be heard at this stage of the proceedings itself; otherwise, the provision contained Section-197 Cr.P.C, becomes an empty formality. On the other hand, Sri. A.H. Bhagwan, learned counsel appearing on behalf of the respondent submits that the question relating to prior sanction can be decided even at the stage of final judgement of the case after appreciation of the evidence let in by both the parties and prays for dismissal of the petition.

5. There is no hard and fast rule that the question of prior sanction should be considered after recording the evidence of both the parties in every case. It is well settled that the question of sanction can be considered at the appropriate stage depending upon the facts and circumstances of that particular case. However, in the case on-hand, the evidence on behalf of the complainant is already recorded and the statement of the accused U/S. 313 of Cr. P.C., is also recorded. The matter is now posted for defence evidence. In this view of the matter, it would be beneficial for the trial Court to arrive at correct conclusion if the evidence on behalf of the accused is also recorded. Whether the alleged act of petitioner herein has occurred during the course of the discharge of his official duty or not is a purely a question of fact and the same has to be decided on the basis of the evidence on record.

6. There cannot be any dispute that the question of sanction U/S. 197 of the code of Criminal Procedure can be raised at any time; may be immediatley after cognizance or framing of charges or

even at the time of conclusion of the trial and after conviction as well. But, for claiming protection U/S. 197 of Cr. P.C., it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty. But if there is no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. The question as to whether the claim of accused that his act done during the performance of his official duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In this connection a reference may be made to the judgement of the Apex Court in the case of P.K. PRADHAN -*VS*-STATE OF SIKKIM[1] wherein it is observed thus;

> "It is well settled that question of sanction U/S. 197 of the Code of Criminal Procedure can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. in order to come to the conclustion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality the question of sanction should be left open

1. 2001 SCC (Cri) 1234

to be decided in the main Judgement which may delivered upon the conclusion of the trial."

7. In view of the aforesaid dictum laid down by the Apex Court, the question of prior sanction can even be decided by the Court either before trial, during the Course of trial or at the time of delivering the judgement on the basis of the evidence to be recorde. As the defence-accused is yet to lead his evidence, it may be difficult for the trial Court to come to the correct conclusion on the question of prior sanction. Added to it, the criminal case is of the year 1985 and the same is pending adjudication since 20 years. It is not in dispute that the matter is now posted for recording of evidence of defence. Under such circumstances, it is not necessary for the trial Court to hear only on the point of sanction at this fag end of the trial, as the matter can be concluded once for all on all aspects of the case including the question of prior sanction. The petitioner will have an opportunity to effectively deal with the said question at the time of leading his evidence as well as at the time of advancing final arguments on the merits of the case. The same would also enable the Trial Court to conclude the proceedings once for all expeditiously. This view of mine is supported by the observations made by the Apex Court in the Judgement cited supra. The Courts below have assigned certain valid reasons for coming to the conclusion, Thus under facts and circumstances of this case, the order of Trial Court directing the parties to submit their arguments both on the question of prior sanction as well as on merits of the matter at the time of final hearing cannot be termed as erroneous or illegal. On reconsidering the material on record, I do not find any illegality in the orders passed by the Courst below. Consequently, the criminal petition is liable to be rejected.

The Criminal petition is **dismissed.** However, having regard to the facts and circumstances of the case and having regard to the fact that the matter is pending since 1985, the Trial Court is directed to dispose of the criminal case as expeditiously as possible.