

(2016) 07 CHH CK 0008

CHHATTISGARH HIGH COURT

Case No: Criminal Misc. Petition No. 783 of 2016.

S.N. Ram (S/o Late Shri
Ramwruksh Ram Aged About 58
Years Occupation Service And
Working As Sub Divisional
Officer, R/o Village And Post
Chikhalakasa, P.S. Dallirajhara,
Tahsil Dondi, District Balod
Chhattisgarh - Petitioner @HASH
State of Chhattisgarh (T

APPELLANT

Vs

RESPONDENT

Date of Decision: July 29, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197(1)(b), Section 482

Citation: (2017) 1 CGLJ 33 : (2016) CriLJ 4943

Hon'ble Judges: Shri P. Sam Koshy, J.

Bench: Single Bench

Advocate: Smt. Pritha Moitra, Advocate, for the Petitioner; Shri Anupam Dubey, Dy.
Government Advocate, for the State

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Shri P. Sam Koshy, J.- The present Petition under Section 482 of CrPC had been filed invoking the extraordinary inherent power conferred upon the High Courts, questioning the order dated 15.06.2016 passed by the Second Additional Sessions Judge, Balod in Criminal Revision No. 18/2016. Vide the said order the Second Additional Sessions Judge, Balod rejected the revision petition filed by the Petitioner upholding order dated 18.02.2016 passed by the Chief Judicial Magistrate, Balod in Criminal Case No. 807/2014. The Court of the Chief Judicial Magistrate, Balod vide its

order dated 18.02.2016 had rejected the application under Section 197(1)B of the CrPC.

2. The facts in brief are that in the year 2013 a complaint was lodged in respect of a large scale irregularities done by the office bearers of the Gram Panchayat Arda in the execution of the Scheme under MNREGA. After investigation an FIR was registered as Crime Number 26/2013 by the Police Station, Suregaon against the accused persons for the offence under Section 409, 420, 467 and 468 of IPC. That in due course of investigation while filing the charge sheet 11 persons were made accused persons including the present Petitioner. It is said that the present Petitioner at the relevant point of time was posted at Janpad Panchayat Daundilohara as Sub Divisional Officer. Immediately thereafter the Petitioner filed an application under Section 197(1)B of the CrPC before the Trial Court seeking for discharge from the case as the Petitioner being a public servant previous sanction of the concerned authorities i.e. State Government had to be taken.

3. The Court below after considering the submissions put forth by the Counsel for the Petitioner on the said application vide its order dated 18.02.2016 rejected the application holding that since the nature of the act said to have been committed by the Petitioner and the other accused persons fall within the category of fraud, cheating and criminal breach of trust by a public servant which are primary offence defined under provisions of IPC and therefore the requirement of previous sanction would not be necessary, thus rejected the application. Against the said order the Revision Petition was also preferred which was registered as Criminal Revision No. 2200018/2016. The Revisional Court also vide the impugned order 15.06.2016 rejected the Revision Petition upholding the views of the Chief Judicial Magistrate reiterating the fact that since nature of the offence alleged against the accused persons also being one that falls within the definition of cheating, fraud and criminal breach of trust by a public servant, offence which otherwise falls within the definitions of Indian Penal Code, the previous sanction for prosecuting the public servant for the aforesaid criminal acts would not be necessary and thus rejected the Revision Petition leading to the filing of present CrMP.

4. Counsel for the petitioner submitted that the provisions of the Code of Criminal Procedure clearly envisages the offences for which no sanction shall be required for a Public Servant for being prosecuted. It was contended that for the purpose of Sections 409, 420, 467 & 468 IPC, sanction would be required for the reason that whatever allegations are against the petitioner, those have all been done in the course of discharge of his official duties and therefore previous and proper sanction is required to be taken before taking cognisance against the said public servant. According to the counsel for the petitioner, initially at the time of filing of the FIR, name of the present petitioner was not reflected but it is only much subsequently the present petitioner had been arrayed as an accused in the said case. It was further contended that even if the entire charge sheet is taken into consideration as

it is without any addition and subtraction, there would be no offence against the present petitioner of having committed or having played a serious role in the commission of the crime. It was also contended that if we peruse the contents of the case diary it would reveal that in fact the petitioner was one of the members of the enquiry committee who had conducted the enquiry against the Sarpanch and the Secretary in respect of the same alleged offence and the Sarpanch and the Secretary were found guilty and later on they were punished. Hence, counsel for the petitioner prayed for quashment of the impugned orders.

5. However, having considered the submissions made by the counsel for the petitioner and on perusal of the record what is clearly reflected from the documents is that at the relevant point of time the petitioner was posted as SDO at Janpad Panchayat, Dondilohara and was the Incharge Officer. During the said period, the money received from the Government for the work under MNREGA scheme was withdrawn by committing fraud in as much as fake and false bills were prepared and the amount was released. It is an admitted position that money of the Bills has also been released on the signature of the petitioner in the capacity of SDO. From the documents it also reflects that there were serious allegations of misappropriation to the extent that money was withdrawn on one such date i.e. 23.05.2011 against 152 trips of Murum being supplied to the Janpad Panchayat which was practically impossible. Likewise, in between, from 06.06.2011 to 11.06.2011, more than 300 trips of Murum work is said to have been executed which again was not possible. These are some of the misappropriations being committed in which the signatures of the present petitioner is also available.

6. Now, whether the petitioner has in fact committed the offence or not is a matter of evidence. This Court at this initial stage of trial would not conduct a roving enquiry threadbare going through all the documents enclosed with the charge sheet to assess the quality of evidence that could be adduced. Thus, it cannot be said that it is a case of no evidence. From the documents it clearly reflects that there is some evidence in the possession of the prosecution which would be thrashed out in the course of leading evidence.

7. So far as the question of previous sanction having not been obtained is concerned, this issue is no longer res integra as the Supreme Court recently in very categorical terms has held that the nature of offence as had been alleged against the present petitioner cannot be termed to be the act which had been committed in the course of discharge of his official duties where a person had been charged for the offence of cheating and fraud etc and therefore, the requirement of sanction before prosecution is not necessary.

8. In this regard, the Supreme Court recently in the case of **Rajib Ranjan and Others v. R. Vijaykumar reported in (2015) 1 SCC 513** in paragraphs-16 & 18 has held as under:

"16.To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, nor bar.

18. The ratio of the aforesaid cases, which is clearly discernible, is that even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted."

9. Again in the case of **Inspector of Police and another v. Battenapatla Venkata Ratnam and another reported in 2015 AIR SCW 3284** the Supreme Court in paragraph-11 has held:

"11. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue. Unfortunately, the High Court missed these crucial aspects. The learned Magistrate has correctly taken the view that if at all the said view of sanction is to be considered, it could be done at the stage of trial only."

Thus, in view of the ratio laid down by the Supreme Court in the aforesaid two judgments and if we see the nature of allegations levelled against the accused persons including the petitioner it would clearly reflect that the alleged acts against the accused persons are that of fraud and cheating. Thus, these acts would not come within the purview of the official discharge of duties and therefore the previous sanction under Section 197 CrPC would not be necessary. Under the said facts and circumstances of the case it cannot be said that the two Courts below have committed an error of law or illegality or infirmity while rejecting the application under Section 197 (1) B of CrPC.

10. Thus, the Cr.M.P. being devoid of merits deserves to be and is accordingly rejected.